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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 827.

FREDERICK W. PELTON, TREASURER OF CUYAHOGA COUNTY, OHIO, APPELLANT,

vs.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND, OHIO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED SEPTEMBER 19, 1879.

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INDEX.

	Original.	Print.
Bill	2	1
Answer	11	5
Exhibit to answer	25	11
Replication	29	12
Decree allowing injunction	30	13
Final decree	31	13
Deposition of Joseph Colwell	32	14
Exhibit A to deposition of Joseph Colwell	34	15
Deposition of L. D. Benedict	36	15
1. Schedule to First National Bank, Cleveland, Ohio	43	19
2. Schedule to Second National Bank, Cleveland, Ohio	44	19
3. Schedule to Commercial National Bank, Cleveland, Ohio	46	20
4. Schedule to Ohio National Bank, Cleveland, Ohio	47	21
5. Schedule to Merchants' National Bank, Cleveland, Ohio	48	21
6. Schedule to National City Bank, Cleveland, Ohio	49	22
7. Schedule to First National Bank, Berea, Ohio	50	23
Appeal bond	52	24
Injunction bond	53	24
Certificate	54	25

1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

In the circuit court of the United States within and for the northern district of Ohio, in the sixth judicial circuit.

Proceedings had in said court, at a regular term thereof begun and held for its January term, A. D. 1879, at the United States court-house, in the city of Cleveland, in said district, before the Hon. John Baxter, circuit judge for said circuit, and the Hon. Martin Welker, district judge for said district, on, to wit, the 14th day of March, A. D. 1879, in the following cause, to wit:

THE COMMERCIAL NATIONAL BANK OF Cleveland, Ohio,
vs.
FREDERICK W. PELTON, TREASURER. } No. 3533.

2 *Bill.*

To the honorable the judges of the circuit court of the United States within and for the northern district of Ohio, in chancery sitting:

Your orator, The Commercial National Bank of Cleveland, Ohio, respectfully represents that it is an incorporated banking association, incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and is established and doing business in the city of Cleveland, in said northern district of Ohio, and brings this its bill of complaint against Frederick W. Pelton, treasurer of Cuyahoga County, Ohio, a resident of said city of Cleveland, and a citizen of the State of Ohio.

And thereupon your orator complains and says that it has a capital stock of twelve hundred and fifty thousand, divided into twelve thousand five hundred shares of one hundred dollars each, all of which is paid up, and certificates for the shares outstanding and owned by a large number of persons, many of whom are non-residents of said State of Ohio, and citizens of other States.

3 That in accordance with an act of the general assembly of the State of Ohio, passed April 16th, 1867, entitled "An act to provide for the taxation of bank shares and bankers," and "An act to provide for the equalization of the valuation of bank shares for taxation," passed April 12th, 1877, the cashier of your orator duly reported to the county auditor of said county the resources and liabilities of said banking association at the close of business on the first Wednesday after the first Monday of May, 1877, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share, as required by the first section of said act of 1877, and thereupon the said auditor proceeded, as required by the second section of said act, and the fifth section of said act of 1867, to assess the value of such shares according to their true value in money, and fixed the same at seventy-three per cent. of the par value thereof, and made out and transmitted to the annual board of equalization of said county a copy of the statement of said cashier so

made to him, together with his own valuation of such shares for taxation; and the said board of equalization, in obedience to the requirements of the third section of said act of 1877, after full consideration of the valuation made by the auditor, proceeded to equalize said shares according to their true value in money, and fixed the valuation thereof the same as the auditor had done; which valuation of said shares for taxation so equalized and determined by said board, together with a copy of the statement made by said cashier, was duly and properly certified and transmitted by said county auditor to the auditor of State, as required by the fourth section of said act of 1877.

That afterwards, in obedience to a certificate from the auditor of the State certifying the value of said shares made by the State board of equalization, provided for in the fifth section of said act of 1877, the said county auditor did enter upon the tax duplicate of said county for the year 1877, against the respective owners of said shares, a tax for the year amounting in the aggregate to thirty-three thousand two hundred and twenty-five dollars and forty-five cents, and upon a valuation of said shares at ninety-three per cent. of the par value thereof; the said tax being levied upon a valuation twenty per cent. higher than that fixed by the county board of equalization, and about four-fifths thereof for the city of Cleveland, to answer the various purposes of that municipal body.

That said duplicate as required by law, with the said taxes charged thereon, has been by said county auditor delivered to said Frederick W. Pelton, treasurer of said county of Cuyahoga, to be by him collected of the several owners of said shares by distraint, attachment, or other legal proceedings, as provided in said acts, who will immediately proceed to enforce the collection thereof, either by a sacrifice of said shares by enforcing the lien thereon created by said acts, or otherwise, unless restrained by the injunction of this honorable court.

5 And your orator further represents that on the 17th day of December, A. D. 1877, on behalf of said shareholders, it duly tendered to said treasurer and offered to pay for the taxes on said shares the sum of twenty-six thousand and ninety seven dollars and fifty cents, that being the full sum required, at the percentage of said levy, to pay all the taxes upon said shares, upon the valuation thereof so fixed by said county board of equalization, and is still ready and willing to pay the same in the manner and at the times provided by law for the payment of taxes, to wit, the one-half on or before the 20th of December, 1877, and the other half on or before the 20th of June, 1878, if the treasurer will receive it or the court so orders. But said treasurer has so far refused to receive said payment unless your orator would also pay the whole amount of said tax as it stands on the duplicate.

And your orator further represents and shows unto your honors that in and by the second section of the twelfth article of the constitution of said State it is provided that "Laws shall be passed, taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money;" and in and by the third section of the same article that "all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals;" and by the fourth section of the thirteenth article it is

6 still further provided that "the property of corporations now existing or hereafter created shall forever be subject to taxation the same as the property of individuals."

And in and by the act of Congress under which your orator is incor-

porated, the right of the State to tax any owner of its shares is made subject to this condition, "that the taxation shall not be at a greater rate than is assessed on other monied capital in the hands of individual citizens of such State."

Your orator avers and insists that the taxes so assessed against its shareholders on account of their shares of stock therein are unjust, illegal, and void for the following amongst other reasons, to wit:

First. They are not taxed by any law prescribing any uniform rate for the valuation of their property and levying taxes thereon in common with all other property, as provided by the constitution, nor do the said acts, under which the taxes purport to be assessed, although general in their nature, have a uniform operation throughout the State, as required by the 26th section of article 2nd of the constitution of said State.

Second. Their property in this corporation is not valued and taxed the same as the property of individuals, and the burden of taxation upon it is very much greater, nor has any equality been preserved in the valuation of the shares for taxation compared with other property in the locality where the bank is established; on the contrary, the valuation in proportion to the market value is fully twice as much as that fixed upon other property, while the rate of levy is the same.

Third. The board constituted by the fifth section of said act of 1877 was and is illegally constituted, the members thereof having been appointed by the general assembly in contravention of the 27th section of the second article of the constitution of the State, which provides that "no appointing power shall be exercised by the general assembly," and the duties devolved upon them of fixing valuations upon said shares of national banks, and changing those fixed by county boards of equalization without reference to any other property, and without any duty imposed or any means afforded of equalizing the valuations of such shares with the valuations fixed upon the various other subjects of taxation, destroys the uniformity of the rule fixed by the constitution and violates the obligation thereby imposed to treat all property alike, to the end that all property may bear an equal burden of taxation, and is subversive of the act of Congress allowing such shares to be taxed, and intended to protect the owners thereof from greater burdens than were imposed upon other moneyed capital at the place where the bank was located.

Fourth. The proceedings of said board were irregular, illegal, and of no binding obligation. While said act purports to give authority to hear complaints, and to equalize the valuation of shares as fixed and returned by the several county auditors or county boards of equalization, not increasing the aggregate more than $100,000.00, yet your orator avers that the said board has proceeded without any complaint made against the valuations made by said auditor and county board, and without any notice to your orator or the other national banks located in said city and county, or the shareholders, to increase arbitrarily the valuations for taxation more than $800,000.00 upon the said shareholders without any hearing, or opportunity for hearing, as is fairly required by said act.

Fifth. The necessary effect of the proceedings had in the assessment and levy of the taxes standing against the shareholders of your orator, and now about to be enforced, has been to deprive such shareholders, both in the matter of valuation and equalization, of all benefit of the constitution and general laws of the State, by which only uniformity in the burdens of taxation upon all descriptions of property could be

secured, to take from them the security afforded by the limitation in the act of Congress, and to impose upon them such excessive exactions as to make the franchises granted by said act comparatively valueless.

And your orator further represents that if the shares of said stockholders are permitted to be sold under the lien created on them by the 6th section of said act of 1867, or otherwise, irreparable injury would not only be done to each of said shareholders, but also to your orator, and it would be thereby subjected to great loss of standing and credit, and other injuries, for the redress of which the law affords no remedies, and the franchises with which your orator is invested by the act of Congress aforesaid would not only be greatly impaired in value, but if such illegal exactions are to continue and be persisted in, would be rendered nearly useless. That the disibility imposed on the bank to make transfers or pay dividends of or upon shares upon which said illegal tax remained unpaid would damage all the ordinary business of the bank and introduce confusion and uncertainty into its transactions, and the consequent loss of the public confidence upon which its success depends. Or if your orator should pay said illegal tax and attempt to deduct the amount from dividends or other funds of the shareholders in his hands, which many of its shareholders have already prohibited its doing, it would be subjected to a great multiplicity of suits brought by its separate shareholders for so doing; and in any event a great number of suits would be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby.

Inasmuch, therefore, as your orator is remediless by the strict rules of the common law and relievable only in equity, it prays that said Frederick W. Pelton, treasurer of said county of Cuyahoga, may be made party defendant to this your orator's bill of complaint, that the writ of subpœna may issue against him, and that he may answer the premises.

10 That your honors will grant unto your orator your writ of injunction, strictly restraining and enjoining, during the pendency of this suit, the said Frederick W. Pelton, treasurer of Cuyahoga County, as aforesaid, from collecting or attempting to collect from your orator or said individual shareholders, by distraint or otherwise, any of the said taxes as the same stand charged upon said duplicate; and that upon a final hearing hereof the said respondent may be decreed to receive, in full of said taxes, the sum so tendered by your orator, and be perpetually enjoined from collecting the balance of said taxes so illegally assessed, and for such other and further relief in the premises as equity and good conscience require.

R. P. RANNEY,
Of Counsel for Complainant.

UNITED STATES OF AMERICA,
Northern District of Ohio:

Be it remembered that on this 19th day of December, A. D. 1877, personally came before me, a United States commissioner in and for said district, Joseph Colwell, who, being by me duly sworn, deposes and says that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements of fact therein stated, as
11 derived from the information of others, he believes to be true, and all other allegations and statements therein contained are true in substance and in fact.

J. COLWELL.

Sworn to before me by the said Joseph Colwell, and by him subscribed in my presence this 19th day of December, A. D. 1877.

CHAS. H. BILL,
Commissioner Circuit Court N. D. O.

Answer.

UNITED STATES OF AMERICA,
Northern District of Ohio:

In the circuit court.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND, plantiff,
against
FREDERICK W. PELTON, TREASURER OF CUYAHOGA COUNTY, defendant.

Answer of Frederick W. Pelton, treasurer, &c.

Now comes the respondent, Frederick W. Pelton, who is sued as treasurer of Cuyahoga County, Ohio, and to so much of the bill of complaint of the said Commercial National Bank of Cleveland as he is advised it is material for him to make answer unto, says: He denies that a great number of the shares of said banking association are owned by non-residents of said State of Ohio; he denies
12 that the taxes assessed upon the shares of the stock of said complainant's banking association against the stockholders and owners thereof are unjust, illegal or void; and this respondent further answering says it is not true as alleged in said bill of complaint, that the shares in said complainant's banking association are not taxed by any rule prescribing a uniform rule for the valuation of their property, and the levying the taxes thereon, as provided in the constitution of the State of Ohio; nor is it true that the said acts of the general assembly of the State of Ohio under and by which said taxes are assessed and levied have not a uniform operation throughout the State of Ohio as required by the 26th section of the second article of the constitution.

And the respondent further answering says, he denies that the said shares in said complainant's banking association are not valued or taxed the same as the property of individual citizens of the State, or that the burden of taxation imposed upon them is much greater than that imposed upon the property of individuals, or that it is more than equal to that imposed upon such property, and that it is not true that equity has not been preserved in the valuation of said shares for taxation as compared with other property in the city of Cleveland and county of Cuyahoga, in which said association is established, or that the valuation of said shares in proportion to their market value is fully twice as much as that fixed or assessed upon other property in said city and
13 county, or that it is more than the market value of the same.

And the defendant further answering says, he denies that the board constituted by the third section of the act of 1876 was, or is, illegally constituted, or that the members thereof were officers appointed by the general assembly within the meaning of the 26th section of the second article of the constitution of Ohio, or that being members of said board they are officers of the State except being incumbents of offices to which they were duly and properly elected by the people of

the State of Ohio, and he denies that the proceedings of said board were illegal or void, or that they were not constituted a board for the assessment and valuation of banking associations, or that they were merely authorized to act upon the valuation fixed thereon by the several county auditors of said State, or to add to or reduce such valuation except upon the hearing of complaints for that purpose, or that without hearing or proofs, or in any manner whatever, the said board arbitrarily increased the aggregate valuation of the shares of banking associations which were returned to them twenty or any per cent., or that the necessary effect of the proceedings had in the assessment and levy of taxes standing against the shareholders of the national banking associations under the said act, by the same board, either in the matter of valuation or equalization thereof, deprived the said complainant or any banking association of the benefit of the general laws of the State enacted to secure uniformity in the burden of taxation, or imposed upon them
14 any excessive exactions or taxes which would render their franchises comparatively valueless; and he denies that the payment and collection of said taxes by the owners of said complainant's banking association would cause irreparable injury to be done to them or either of them, or that the complainant would be subjected to great loss of standing or other injury, or that the franchises of said complainant granted by the act of Congress would be greatly impaired in value, or rendered nearly valueless, or that the lien of said taxes upon said shareholders would cause any injury to said complainant's banking association, or that said complainant should pay the taxes for those of its shareholders whom by law it is required to pay for, and deduct the amount thereof from their dividends or other funds in its hands, it would be subjected legally to any suits which might be brought against it by the shareholders for so doing, or that the said complainant would be subjected to great expense and irreparable loss or injury by so doing.

To the contrary of all which, this respondent avers that by and under the said act of Congress of the United States, entitled "An act to provide for the national currency, &c.," approved June 3rd, 1864, the shares of stock of said complainant's association are personal property, and in and by said act it is permitted and was declared by the Congress of the United States that the legislature of each State might determine and direct the manner and place of taxing all the shares of the national banking association organized and established under said act,
15 located within such State, subject only to two restrictions. First. That the taxation thereon should not be at a greater rate than should be assessed upon other moneyed capital in the hands of individual citizens of such State. Second. That the shares owned by any non-resident of the State should be taxed in the city or town in which such association should be located and established; and this respondent says that the tax mentioned in said complainant's bill assessed upon the shares of said complainant's banking association are not taxed at a greater rate than is imposed by the State of Ohio upon other moneyed capital in the hands of the individual citizens of said State resident in said city of Cleveland, and that the shares of the non-residents are taxed in the city of Cleveland, where said banking association is established and located.

And this respondent, further answering, says that by the second section of the 12th article of the constitution of the State of Ohio, and to which this respondent begs leave to refer and make part of this answer, a duty is prescribed to and enjoyned upon the general assembly of the State of Ohio to pass laws by which all the property, real, personal and

mixed, including the moneyed capital of the individual citizens of the State, shall be taxed at its true value in money, and in obedience to the same requirements of the constitution the general assembly has at various times enacted laws for the valuation and taxation of all property within the State at its true value in money, and especially has the said general assembly enacted the following laws, to which the respondent begs leave to refer, and to make a part of this answer, to wit:

16

An act entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 5th, 1859, and to be found in the 56th vol. of the official annual published laws of the State of Ohio, beginning on the 175 page, and the following acts amendatory and supplementary thereto, to wit, an act passed March 29th, 1861, to be found in the 58th vol. of said laws, beginning on the 47th page; and an act passed March 30th, 1864, to be found in the 61st vol. of said laws, page 62; and an act passed April 8th, 1865, to be found in the 62nd vol. of said laws, page 105; and also an act passed April 10th, 1865, to be found in the same vol., page 144; and an act passed March 30th, 1868, to be found in the 65th vol. of said laws, page 38; and also an act passed May 8th, 1868, to be found in the same vol., beginning at the 166th page, whereby the legislature of the State of Ohio has required that all the property of every description within the State shall be entered for taxation at its true value in money, and be placed upon the duplicate of the proper county for taxation at its true value in money; and especially has the legislature of said State required of each individual citizen to make out a true list annually of all his personal property, rights and credits, moneys and moneyed capital, at its true value in money, under his personal oath, and has imposed severe penalties for the disobedience of this duty or the making of a false oath or affirmation in respect thereto, and in addition thereto it has established and constituted various boards for the purpose of correcting the returns thus made if the same should prove false or incorrect, so as to arrive at the true valuation thereof in money, and in case any citizen fails to make such return to ascertain and value his property at its true value in money, and place the same upon the duplicate at said value. And this respondent says that if any property or moneyed capital of any citizen of said State has been valued, entered upon the duplicate of the proper county at less than its true value in money, it is not the fault of the legislature of the State in intention or effort in that behalf, but because, as in all other human affairs, it is impossible to carry absolute certainty into the execution and administration of the laws so enacted for the valuation and taxation of property within the State.

17

And this respondent, further answering, says that by the third section of the 12th article of the constitution of the State of Ohio, to which this respondent begs leave to refer and make part of this answer, it was further provided, and part of the duty of said legislation, especially to pass laws for the taxation of banks and bankers, to the end that all property employed in the business of banking should bear the same burden of taxation as that imposed upon the property of individuals; and he says that at various times and dates the general assembly has passed laws for the valuation and taxation of banks and bankers, to the end that all property employed therein should, like the property and moneyed capital of individual citizens, be valued and taxed at its true value in money; and he further says that after the passage of the aforesaid act of Congress approved June 3rd, 1864, and after various banking associa-

18

tions had been organized and established in the State of Ohio, and on the 16th day of April, 1867, the legislature of the State of Ohio passed an act entitled "An act to provide for the taxation of bank shares and bankers," and to be found in the 64th vol. of the said laws of the State of Ohio, beginning on page 204, and on the 12th day of April, 1876, the said legislature passed another act entitled "An act to provide for the equalization of bank shares for taxation," to be found in the 73rd vol. of the laws of the State of Ohio, beginning on the 251st page, and to which acts this respondent begs leave to refer and make part of this answer; and that under and by the provisions of said acts, from their date until the year 1877, shares in the complainant's banking association, and all other banking associations and banks in the State of Ohio, were taxed, but owing to the great inequality which occurred and existed in the provisions for the valuation of the shares of banking associations in the different parts of the State, and the more effectual' to arrive at the true valuation in money of the property and shares in banks and banking associations, which was attempted to be done
19 by the act of April 12th, 1876, on the 12th day of April, 1877, the legislature passed another act entitled "An act to provide for the equalization of the valuation of bank shares for taxation" and to repeal the act therein named, to wit, the said act of April 12th, 1876, to be found in the 74th vol. of the laws of the State of Ohio, and beginning on the 88th page thereof, and to which this respondent begs leave to refer and make part of this answer.

And in and by the first section of said act it was made the duty of the cashier of each bank or banking association located in said State of Ohio, whether incorporated and organized under the laws of said State or of the United States, to make out and return to the auditor of the county in which such bank was located, on or before the 2nd Monday of May annually, a report in duplicate under oath, exhibiting in detail and under appropriate heads the resources and liabilities of such bank or banking association at the close of business on the first Wednesday after the first Monday of May, preceeding such report, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share.

And by the second section of the act it was made the duty of the auditor of the county in which any bank was located to assess the value of the shares of such bank according to their true value in money, from which deductions were to be made as required by the 5th section
20 of the act aforesaid of April 16th, 1867. and which made provision for deducting the value of the real estate of such banks, which real estate is assessed and taxed as all other lands by the law of the State, and immediately after he had so determined and assessed the value of the shares of such bank or banking association to make out and transmit to the annual board of equalization of the county in which such bank was situated a copy of the statement made and returned to him by the cashier of such bank or banking association, together with the valuation of the shares for taxation as fixed by him.

And it was made the duty of such board of equalization to equalize the shares of such bank, so fixed and determined by such auditor, according to their true value in money; and said board of equalization having equalized and determined the valuation of such shares, it was then the duty of the auditor of such county in which such bank or banking association was situated to make out and transmit to the auditor of State a copy of the statement made to him by the cashier of the bank or banking association, together with the valuation of the shares of

such bank for taxation, as equalized and determined by such board of equalization.

And by the 5th section of said act the auditor of State and treasurer of State and the attorney-general of the State were made and constituted a board of equalization for the shares of all the banks and banking associations within the State, as so fixed and determined by the respective county auditors and county boards of equalization, for the purpose of taxation.

21 The said board was required to make, on the third Tuesday of June, annually, at the office of the auditor of State, in Columbus, and had power and were required to hear complaints and equalize the valuation of the shares of all the banks or banking associations in the State, as fixed and determined by the said respective county auditors and county boards of equalization under said act; not, however, authorized to increase or decrease the aggregate value of the amount returned by such county auditors and county boards more than the sum of $100,000.00; and when such State board had equalized such valuation, it was made the duty of the auditor of the State forthwith to certify to the auditor of the proper county the valuation of the shares of the banks or banking associations located within such county, as equalized by said board, and thereupon it was made the duty of the county auditor to enter upon the county duplicate for taxation the shares of the respective banks within his county, as valued and equalized by said State board.

And this respondent, further answering, says that prior to the second Monday of May, 1877, the said cashier of said complainant's bank made a report in duplicate, under oath, to the auditor of said county of Cuyahoga, exhibiting in detail and under appropriate heads the resourses and liabilities of such banking association at the close of its business on the first Wednesday after the first Monday of May, 1877,

22 together with the full statement of the names and residences of the stockholders of said complainant, with the number of shares held by each, and the par value of each share.

And thereupon the auditor of the county of Cuyahoga proceeded to assess the value of the shares of said complainant's banking association, after making the deductions required by the act of April 16th, 1867, at what he considered to be their true value in money, and having so assessed the value of the same he immediately thereafter transmitted his action to the annual board of equalization of the county of Cuyahoga, a copy of the statement made and returned by the said cashier of said complainant's banking association aforesaid, together with the valuation of such shares as determined by him, which is made an exhibit hereto.

And said county board of equalization of said county having received such statement, proceeded to consider the same and made no change therein, but assessed the same at the same value as had been done by the county auditor, and thereupon the auditor of said Cuyahoga County made out and transmitted to the auditor of the State a copy of the statement made to him by the said cashier of said complainant's banking association, together with the valuation of the shares of said complainant's banking association for taxation as equalized and determined by him and the said county board of equalization as aforesaid.

23 And this respondent, further answering, says that the said board of equalization, consisting of the auditor of State, treasurer of State, and attorney-general, did meet at the office of said auditor of State, at Columbus, on the third Tuesday of June, 1877, and having before them such statements and valuation of the shares of said complainant's banking association as aforesaid, with like returns and valuation

of all the banking associations within the State of Ohio, proceeded to consider the same and hear complaints, equalized the valuation of all the shares of all the banking associations within said State, as determined upon and reported by the county auditors and county boards of equalization so required to be sent to them as aforesaid, and thereupon made an equalization of the valuation of all the shares of all the banking associations within said State of Ohio, and as to the shares of said complainant's banking association it did increase the valuation of the same from the valuation as fixed and determined upon by the said county auditor and county board of equalization of the county of Cuyahoga aforesaid to the amount of $250,000, making the value of the shares 93 per cent. of the par value, but they did not in the aggregate increase the valuation of all the shares of all the banks beyond the sum of $100,000.00 or decrease the same beyond that amount, as required by said act, and having *having* so fixed and determined the valuation of the shares in complainant's banking association, the said auditor of State did, on the 20th day of August, 1877, transmit to the auditor of the county of Cuya-
24 hoga the valuation of the shares of complainant's banking association as determined and fixed upon by said State board of equalization but 93 per cent. on the par value thereof.

And the said auditor of the county of Cuyahoga thereupon, as he was required by said act, did place upon the duplicate of the county of Cuyahoga, with all the other property taxable in said county, the said shares of said complainant's banking association, at the valuation so fixed upon and determined by the said board of equalization, and assessed upon the same merely the same rate as was assessed upon all the other property upon the county duplicate in the city of Cleveland for the said year 1877, at the place where such banking association of complainant is located and doing business, and this is the same tax mentioned and described in the complainant's bill; but said valuation is not in excess of the true value of said shares in money, and the rate is the same as that assessed on the moneyed capital of the individual citizens of the State, resident in said city of Cleveland.

Thereupon this respondent prays to be hence dismissed with his costs.

GRANNIS AND GRISWOLD,
Solicitors for Respondents.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Frederick W. Peton being duly sworn does depose and say, that he is the defendant named in the foregoing answer subscribed by him,
25 that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein contained on information and belief, and as to such matters he verily believes them to be true.

F. W. PELTON,
Co. Tr.

Sworn to and subscribed before me and in my presence this 28th day of January, A. D. 1878, by the said Frederick W. Pelton.

[SEAL.]

H. M. CASTH,
Notary Public.

EXHIBIT.

(Forms for bank statements in duplicate under provisions of act of April 12th, 1877.)

Banks or banking associations organized under the laws of the State of Ohio or of the United States.

To the cashier of the Commercial National Bank, Cleveland, Ohio:

SIR: You are hereby required to make out upon the forms herewith, and return to me, at my office, at Cleveland, in the county of Cuyahoga, Ohio, on or before the second Monday of May, A. D. 1877, a report in duplicate, under oath, exhibiting in detail the resources and liabilities of the above bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such
26 report, together with a full statement of names and residences of shareholders therein, with the number of shares held by each, and the par value of each share.

Dated May 4th, 1877.

L. D. BENEDICT,
Auditor of Cuyahoga County, O.

Resources.		Liabilities.	
*U. S. bonds to secure circulation	400,000	Capital	1,250,000
Bank building	50,000	Surplus	250,000
Loans and discounts	2,178,492 35	Circulation	356,970
Loans past due and unpaid	77,307 73	Due individual depositors	669,356 42
Due from banks and bankers	112,577 05	Due banks & bankers	261,524 84
Due from U. S. Treasurer	9,395	Bills payable	222,000
Current expenses	126 54		
Checks and cash items	24,245 37		
National bank notes	6,109		
Silver coin and nickels	1,607 22		
Legal tender notes	150,000		
Total	$3,009,851 26	Total	$3,009,851 26

*Of the $400 00 United States bonds mentioned above under head of "Resources," only $313,000 are the property of the bank, and $87,000 are borrowed and form a part of the item "bills payable," under head of "Liabilities."

COUNTY AUDITOR'S OFFICE,
Cleveland, O., May 29th, 1877.

The valuations, as assessed and returned by the county auditor and the county board of equalization upon the shares of the within-named bank, are as follows:
27

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
12,500	$100	$29,500	$912,500	$912,500

L. D. BENEDICT,
County Auditor.

(To be filed by the cashier.)

The following is a description and the assessed valuation of the real estate owned by the aforesaid bank, to wit:

One-half in common of bank building corner of Superior and Water streets; assessed valuation twenty-nine thousand eight hundred and ninety dollars ($29,890).

Affidavit.

STATE OF OHIO,
Cuyahoga County, ss:

I, Joseph Colwell, cashier of the Commercial National Bank of Cleveland, Ohio, do solemnly swear that the foregoing is a correct statement of the names and residences of the stockholders, of the number of shares held by each, of the par value of said shares, together with a description and the appraised value for taxation of the real estate owned by said bank at the close of business on the first Wednesday after
28 the first Monday of May, 187 .

J. COLWELL, *Cashier.*

Sworn and subscribed to before me, a notary public in and for said county, this 16th day of May, 1877.

[SEAL.]

GEORGE W. MASON,
Notary Public.

(Endorsed:) Annual statements under act of April 12th, 1877, of the Commercial National Bank, Cleveland, Cuyahoga County, Ohio. Received at the auditor of State's office, May 30th, 1877.

29 *Replication.*

UNITED STATES OF AMERICA,
Northern District of Ohio:

In the circuit court.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND
vs.
FREDERICK W. PELTON, TREASURER CUYAHOGA COUNTY, O.

The replication of the Commercial National Bank of Cleveland, complainant, to the answer of Frederick W. Pelton, treasurer of Cuyahoga County, Ohio, defendant.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says, that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is untrue, uncertain, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

R. P. RANNY,
Of Counsel for Complainant.

30 And afterwards, at the October term, 1877, of said court, to wit, on the 19th day of December, A. D. 1877, the following order was entered, to wit: (Jour'l, 9, page 90.)

This day came the parties by their respective solicitors, and it appearing to the court that due and legal notice has been given to the respondent of the application of the complainant for a provisional injunction herein as prayed for in the bill of complaint, the same came on to be heard and was argued by counsel; upon consideration whereof it is ordered and adjudged that the said application be granted, and that the said respondent be restrained and enjoined during the pendency of this suit or the further order of this court from collecting or attempting to collect from said complainant or the shareholders in said banking association the taxes standing upon the duplicate against them on account of their stock therein as prayed for in the bill.

Ordered that complainant give bond in the sum of fourteen thousand three hundred dollars ($14,300) with surety to the satisfaction of the clerk of this court, conditioned to pay all costs and damages accruing from the granting of this injunction in case the same is dissolved upon further hearing.

And it is further ordered that the said complainant, upon the request of said respondent, pay over to him, on account of taxes admitted to be properly chargeable on said stock, the said sum of twenty-six thousand and ninety-seven and $\frac{50}{100}$ dollars, the one half thereof on or before the 20th day of December, 1877, and the other half thereof on or before the 20th day of June, 1878, and that the said respondent in receiving said

31 sum on account of taxes on said shares of stock be in no way prejudiced or concluded in claiming that the whole amount of taxes on said shares as the same stand upon the duplicate are properly due and payable.

Decree.

COMMERCIAL NATIONAL BANK OF CLEVELAND, OHIO, vs. F. W. PELTON, TREASURER, &C.	}	In chancery. No. 3563.

This cause came on to be heard at this term and was argued by counsel, and thereupon upon consideration thereof it was ordered, adjudged, and decreed that the equities of the case are with the complainant, and that the defendant and his successors in office are perpetually enjoined from collecting or attempting to collect the disputed tax not heretofore paid to the defendant under the decree hereinbefore rendered by consent of parties hereto.

Ordered that the defendants pay the costs of this cause taxed at $, for which an execution may issue as in judgements at law.

From which decree the defendant prays an appeal to the next term of the Supreme Court of the United States; which is allowed, and bond for such appeal is fixed at $500.

32 Deposition of Joseph Colwell, taken before me, H. Clark Ford, a notary public within and for the county of Cuyahoga, in the State of Ohio, on the 28th day of February, in the year 1879, between the hours of 10 a. m. and 6 p. m., at the office of Baldwin and Ford, # 113 Superior street, in the city of Cleveland, in said county, pursuant to the annexed agreement, to be read in evidence on behalf of the complainant in action pending in the United States circuit court for the seventh circuit and northern district of Ohio, sitting in Cleveland, wherein The Commercial National Bank of Cleveland is complainant, and Frederick W. Pelton, treasurer of the county of Cuyahoga, in said district, is respondent.

JOSEPH COLWELL, being duly sworn, deposes and says:

That he is 35 years of age, and that he is cashier of said Commercial National Bank of Cleveland, and has been since January 1st, 1871.

Question 1. State whether the Commercial National Bank paid the taxes for the year 1877, a portion of which are in controversy in this suit.

Answer. The Commercial National Bank of Cleveland paid all the taxes on its shares for 1877 on the bases of the valuation made by the county auditor and county board of equalization; in short, all except that part for which injunction was allowed in the case for which this deposition is taken.

Q. State what stockholders foreign to the State of Ohio and residing in and citizens of other States of the Union the Commercial National Bank of Cleveland had during the years 1877 and 1878.

33 A. There was little change in the foreign stockholders of that bank during those years. Attached hereto and marked Exhibit A is a correct list for the years 1877 and 1878. There were sixteen stockholders resident and citizens of other States of the Union for all that time, and at one time more. They held all the time, in the aggregate, $131,900 of stock. These lists cover the time of the commencement of this suit.

J. COLWELL.

I, H. Clark Ford, a notary public within and for the county of Cuyahoga, in the State of Ohio, do hereby certify that Joseph Colwell was by me first sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by myself in the presence of the witness, and was subscribed by said witness in my presence, and was taken on the 28th day of February, 1879, by agreement of parties complainant and respondent, complainant being present by C. C. Baldwin, its counsel, and respondent by S. O. Griswold, his counsel; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereto set my hand and my official seal at Cleveland, Ohio, this 28th day of February, 1879.

H. CLARK FORD,
Notary Public.

34 The foregoing deposition was taken by agreement of counsel for complainant and respondent, notice thereof being waived, and it is stipulated and agreed that it may be used in evidence so far as competent in the case in which the same was taken, being No. 3563 in the United States circuit court of the northern district of Ohio, in which

Commercial National Bank is complainant and Frederick W. Pelton, treasurer, is respondent.

C. C. BALDWIN,
Of Counsel for Complainant.
GRAMIS AND GRISWOLD,
Solicitors for Respondent.

EXHIBIT A.

List of foreign stockholders in the Commercial National Bank of Cleveland during the years 1877 and 1878.

Stockholders.	Residence.	1877. Shares.	1878. Shares.
John Alexander	Malmsbury, England	222	172
Sebella Alexander	" "	90	90
Lucy H. Boardman	New Haven, Conn	104	104
Lucy H. & W. J. Boardman, trustees	" " "	173	173
William C. Benedict	Brooklyn, New York	292	212
J. Elizabeth G. Clark	Bridgeport, Conn	10	10
Mary S. Guthire	New London, "	22	22
William A. Gregory	Newark, New Jersey	5	
Nancy Gregory	Bridgeport, Conn	10	10
Tiryat L. Henry	New York City	156	156
Burritt W. Horton	" " "	102	102
John Lyman	Yonkers, New York	207	207
Henry Merry	Negaunee, Mich	40	40
Helen E. Pierson	Newark, N. J	10	10
35 David Stewart	New York City	102	102
Nathan C. Winslow	Buffalo, N. Y	67	67
Mary A. Winslow	" "	65	65
Richard Winslow	" "	26	26
Caroline L. Williams	Baltimore, Md	13	13

I hereby certify that the above is a correct transcript from the stock books of this bank.

J. COLWELL,
Commercial National Bank of Cleveland.

CLEVELAND, *March 6th*, 1879.

Sworn to by said Colwell before me and by him subscribed in my presence this 28th day of February, 1879.

H. CLARK FORD,
Notary Public.

Deposition of L. D. Benedict, taken before me, H. Clark Ford, a notary public within and for the county of Cuyahoga, in the State of Ohio, on the 28th day of February, in the year 1879, between the hours of 10 a. m. and 6 p. m., at the office of Baldwin and Ford, # 113 Superior street, in the city of Cleveland, in said county, pursuant to the annexed agreement, to be read in evidence on behalf of the complainant in action pending in the United States circuit court for the seventh circuit and northern district of Ohio, sitting in Cleve-
36 land, wherein The Ohio National Bank of Cleveland is complainant, and Frederick W. Pelton, treasurer of the county of Cuyahoga, in said district, is respondent.

L. D. BENEDICT, being duly sworn, deposes and says:

That he is 50 years of age, and that he was auditor of said Cuyahoga County, Ohio, for the years 1876 and 1877, and had been previously for a number of years an employee in the auditor's office in said county.

A. As such county auditor I was a member of the board of county equalization, and acted as a member of the board in equalizing the valuation of the shares of the various national and other banks in said Cuyahoga County during those years.

Q. State how the valuation placed by the county board of equalization upon the shares of the various national banks of Cuyahoga County in May, 1877, compared with the valuations for taxation of other personal property, including banking capital.

(Objected to by defendant's att'y.)

A. I was of the impression at the time, and am now, that it was a little higher in proportion. I know the matter was talked over by the board and it was our aim to make the assessment so that it should compare favorably with other taxable property.

Q. State how it compared with the valuation upon other banking capital.

(Objected to by def't's att'y.)

A. I think that the value we placed on the national banks was higher than the assessed value returned by private banks.

37 Q. State how the valuation placed by that board upon the national bank shares compared with the valuation appearing upon the tax-books of real estate in Cuyahoga County.

(Objected to by defendant's attorney.)

A. I could not form any opinion on that subject. Our board had nothing to do with real estate except upon complaint of parties.

Q. From your acquaintance with the valuation of real estate appearing upon the auditor's books for the year 1877, what proportion should you say the assessed value of real estate did bear to its then cash value?

(Objected to by defendant's att'y.)

A. I don't think it would exceed 45 per cent., take aggregate.

Cross-examined:

Q. State whether the county board of equalization at the time they passed upon the valuation of the shares of the different banks in Cuyahoga County had before them the sworn returns of the resourses and liabilities of the said banks made by the cashiers as required by law in the month of May of that year?

A. We did.

Q. Please look at the papers exhibited to you, copies of which, so far as relates to the resourses and liabilities of said banks, are marked Schedule 1, 2, 3, 4, 5, 6, and 7, and state what they are.

A. They are the returns made to me as auditor by the cashiers

38 of the banks of the resourses and liabilities for that year. Schedule 1 is the statement of the First National Bank, Cleveland; 2, of the Second National; 3, the Commercial National; 4, the Ohio National; 5, the Merchants' National, and 6, the National City Bank of Cleveland, and 7, of the First National Bank of Berea. The addenda to each schedule is the valuation for taxation as assessed by the county board of equalization.

Q. Referring to the statement of resourses of the First National Bank, as set forth in the schedule which is made part of your answer, there is the item United States bonds to secure circulation, $300,000; will you state, if you can, what valuation, if any, the county board placed upon these bonds in arriving at a valuation of the shares of said banks?

A. I can't state. I don't think we placed any valuation on them.

Q. In the same schedule it appears that the loans of said bank

amounted to $697,568.60. State if the county board made an estimate of the then present cash value of said loans in their arriving at the valuation of the shares of said bank.

A. There was an estimate made, and quite a large deduction made.

Q. This bank had a surplus, it appears, of one-seventh. Can you state whether the deduction from the loans was greater than the one-seventh part thereof?

A. I can't state. We preserved figures for some time, but they got lost.

Q. Did the board make any investigation as to the responsibility of the parties to whom the loans were made in order to ascertain the cash value of said loans?

39 A. No.

Q. State whether the statements as to the action of the board in the valuation of the shares of the First National Bank, Cleveland, given in answer to the interrogatories of defendant's counsel, are true as to the valuation of the shares of the other banks named.

A. The same as to each of the banks. My answer would be the same as to each of the banks.

Q. State, if you know, if the money of any individual citizen of Cuyahoga County invested in a bond of equal value to the United States bonds owned by the banks was assessed upon the duplicate at less than the face of such bond.

A. No; I don't know of any.

Q. State whether or not the assessors for the different wards and towns in the county of Cuyahoga did not leave instructions to return all personal property and buildings at their true value in money.

(Objected to by plaintiff's att'y.)

A. They are furnished with printed forms containing the law which requires them to return all such property in its true value in money.

(Answer objected to by plaintiff's att'y.)

Q. Were you aware, as auditor or as a member of the board, that any assessor that year—the year 1877—knowingly or willfully neglected to perform the duty required of him by law?

(Objected to by plaintiff's att'y.)

A. No, sir.

Q. State whether or not any of the above-mentioned banks, or

40 any person representing them, made any complaint to your board that the valuation of the property of any of the citizens of the county was returned either by such citizen or by the assessors at less than the true value in money of such property.

(Objected to by plaintiff's att'y.)

A. I can't say that they did.

Q. In case complaints were made before your board that any particular property or money invested of the citizens of the county was returned or appraised at less than its true value, did your board entertain such complaints and proceed to act upon the complaint and ascertain the true value thereof?

(Objected to by plaintiff's att'y.)

A. We did.

Q. In this county, there being a city of the first class, there was also a city board of equalization, of which you were a member, was there not? And, if so, whether its jurisdiction as to the matter of complaints, &c., was the same as the county board and confined to the limits of the city?

(Objected to by plaintiff's att'y.)

A. There was such a board, and its jurisdiction was the same.

Q. State whether or not, before this city board, so called, the banks or any one representing them made complaints that the personal property of the citizens of Cleveland and their moneys invested in securities or otherwise was either returned by them or by the assessors at less than the true value in money?

(Objected to by plaintiff's att'y.)

A. I can't state that they did; but if any complaint was made,
41 it was investigated by the board and acted upon. In one case I remember we raised the return of an individual banker some $30,000.

(Answer objected to by plaintiff's att'y.)

Q. Can you now state of any particular piece of land or real estate that was assessed at less than its true value in money; and, if so, can you give the assessed value thereof, and what, in your judgment, was its true value in money?

A. I don't know as I can call to mind any particular piece.

Redirect examination:

Q. Can you call to mind any piece of real estate which was assessed for taxation at its full cash value?

(Question objected to by def't's att'y.)

A. No, sir; I cannot.

Q. Can you tell how the assessment upon the national banks of the city of Cleveland compared in amount with the entire assessment of other personal property in the city of Cleveland that year?

(Objected to by defendant's att'y.)

A. I cannot; but my memory is it was about one-tenth.

Recross-examination:

Q. I will ask you if you knew, in 1877, of the sales of any shares of the national banks of Cleveland at less than par?

A. I knew of no sales.

L. D. BENEDICT.

42 Re-examination of L. D. Benedict, made at the place above-named, on this 1st day of March, 1879, and taken before me, H. Clark Ford, notary public, in and for said Cuyhoga County.

Q. Can you tell how the assessment upon the national banks of the city of Cleveland compared in amount with the entire assessment of other personal property in the city of Cleveland that year?

(Question objected to by defendant's att'y.)

A. The entire personal property of the city, exclusive of national banks, amounted to $15,518,048. The value of the bank shares as equalized by the county board, amounted to $3,236,500, and as equalized by the State board amounted to the sum of $4,046,045. When a similar question was asked in my former examination it was misunderstood by me.

L. D. BENEDICT.

I, H. Clark Ford, a notary public within and for the county of Cuyahoga, in the State of Ohio, do hereby certify that L. D. Benedict was by me first sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by myself in the presence of the witness, and was

subscribed by said witness in my presence, and was taken on the 28th day of February, 1879, and 1st day of March, 1879, by agreement of parties complainant and respondent, complainant being present
43 by C. C. Baldwin, its counsel, and respondent by S. O. Griswold, his counsel. That I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereto set my hand and my official seal at Cleveland, Ohio, this 1st day of March, 1879.

H. CLARK FORD,
Notary Public.

SCHEDULE 1.

First National Bank, Cleveland, Ohio.

Resources.		Liabilities.	
U. S. bonds to secure circulation	300,000	Capital stock	300,000
5 % redemption a/c	12,938 07	Surplus	100,000
Expense a/c	5	Bills payable	15,000
Loans	697,568 60	Circulation	268,340
Cash (currency)	314,771 52	Dividends unpaid	30,900
Gold	4,547 30	Interest a/c	2,056 67
Due from banks & bankers	150,159 02	Profit & loss	628 37
		Deposits	715,552 70
		Due banks & bankers	47,511 77
Total	1,479,989 51	Total	1,479,989 51

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, May 29, 1877.

The valuations as assessed and returned by the county auditor and the county board of equalization upon the shares of the within-named bank are as follows:

44 Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
3,000	$100	.....	$240,000	$240,000

L. D. BENEDICT,
County Auditor.

SCHEDULE 2.

Second National Bank, Cleveland, Ohio.

Resources.		Liabilities.	
U. S. bonds to secure circulation	467,000	Capital stock	1,000,000
Banking house & fixtures	80,000	Circulation	420,000
Other real estate	3,793 68	Individual deposits	994,859 82
Claims in suit	11,705 33	Time certificate	198,800
Cash	208,148 44	Due to banks & bankers	120,456 32
Loans and discounts	1,799,695 44	Suspense a/c	15,220 83
Due from banks & bankers	222,765 60	Surplus fund	123,000
		Profit & loss a/c	20,771 52
Total	2,793,108 49	Total	2,793,108 49

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, May 29, 1877.

The valuation as assessed and returned by the county auditor and the county board of equalization upon the shares of the within-named bank are as follows:

45 Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
10,000	$100	$1,100	$730,000	730,000

L. D. BENEDICT,
County Auditor.

The following is a description and the assessed valuation of the real estate owned by the aforesaid bank, to wit:

One-half in common of National Bank building, Cleveland, Ohio, N. E. corner of Superior and Water streets, assessed, 29,890; 440 acres land in Greenwood County, Kansas, 1,311.

46 SCHEDULE 3.

Commercial National Bank, Cleveland, Ohio.

Resources.		Liabilities.	
*U. S. bonds to secure circulation	400,000	Capital	2,250,000
Bank building	50,000	Surplus	250,000
Loans and discounts	2,178,492 35	Circulation	356,970
Loans past due and unpaid	77,307 73	Due individual depositors	669,356 42
Due from banks and bankers	112,577 05	Due banks and bankers	261,524 84
Due from U. S. Treasurer	9,395	Bills payable	22[illegible],000
Current expenses	126 54		
Checks and cash items	24,245 37		
Notes of other national banks	6,100		
Silver coin and nickels	1,607 22		
Legal tender notes	150,000 00		
Total	3,009,851 26		3,009,851 26

*Of the $400,000 U. S. bonds mentioned above, under head of "Resources," $313,000 are the property of the bank and $87,000 are borrowed and form a portion of the item "bills payable," under head of "Liabilities.

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, May 29, 1877.

The valuation as assessed and returned by the county auditor and the county board of equalization upon the shares of the within-named bank are as follows:

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
12,500	$100	$29,890	$912,500	$912,500

L. D. BENEDICT,
County Auditor.

47 The following is a description and the assessed valuation of the real estate owned by the aforesaid bank, to wit:

One-half in common of bank building, corner of Superior and Water streets, assessed valuation twenty-nine thousand eight hundred and ninety dollars ($29,890).

SCHEDULE 4.

Ohio National Bank, Cleveland, Ohio.

Resources.		Liabilities.	
Loans and discounts	601,624 75	Capital stock	400,000
U. S. bonds	300,000	Surplus fund	50,935 65
Expenses	64 62	Circulation	270,000
Cash	121,794 02	Deposits	241,091 11
Revenue stamps	100	Profit and loss	7,333 85
Furniture & fixtures	3,428 31	Due banks & bankers	106,010 21
Five per c't reserve fund with U. S. Treasurer	13,500		
Third National Bank New York	943 01		
Due from sundry banks and bankers	33,916 11		
Total	1,075,370 82		1,075,370 82

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, , 187 .

The valuations as assessed and returned by the county auditor and the county board of equalization upon the shares of the within-named bank, are as follows:

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
4,000	$100		$280,000	$280,000

L. D. BENEDICT,
County Auditor.

48 SCHEDULE 5.

Merchants' National Bank, Cleveland, Ohio.

Resources.		Liabilities.	
Loans and discounts	1,441,295 27	Capital	1,200,000 00
U. S. bonds	900,000	Surplus	184,000
Due from banks & bankers	376,541 36	Profits	8,405 05
Banking-house & lot and other real estate	38,000	Circulation	449,640
Expenses	579 69	Deposits	1,371,491 70
Premiums paid	13,769	Dividends unpaid	24,705
Cash on hand	406,898 51		
Due from Treasurer U. S.	60,660		
Total	$3,237,741 81	Total	$3,237,741 81

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, May 29, 1877.

The valuation as assessed and returned by the county auditor and the

county board of equalization upon the shares of the within-named bank, are as follows:

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
12,000	$100	$32,185	$924,000	924,000

L. D. BENEDICT,
County Auditor.

The following is a description of the assessed valuation of the real estate owned by the aforesaid bank, to wit:

S.W. cor. of original lot 53—22¾ feet on Superior st., by 75 ft. on Bank st., Cleveland, O., N.E. cor. Superior & Bank streets, valued at $17,935.00. Township of Strongsville, range 14, town 5, lot 34, S.E. P. & lot 35, E. P. cor., 25 acres, valued at $510.00, and latter 101.92 acres, valued at $2,110.00, S. L. 2, G. and A. allotment 75 ft. on Prospect to Sibley st., valued at $11,630.00.

49 SCHEDULE 6.

National City Bank Cleveland, Ohio.

Resources.		Liabilities.	
U. S. bonds dep. for circulation	200,000	Capital stock paid in	200,000
Cleveland bonds	16,621 77	Surplus fund	50,0 0
Due from U. S. Treasurer	12,989 93	Circulating notes	175,800
Interest & expense &c	432 51	Bills payable	12,000
Bills discounted	427,437 40	Suspense &c	624 09
Cash on hand	111,092 78	Unpaid dividends	772 50
Due from banks & bankers	56,479 43	Profit & loss	4,918 67
		Deposits	199,847 91
		Due to banks & bankers	181,081 65
Total	$825,044 82	Total	$825,044 82

COUNTY AUDITOR'S OFFICE,
Cleveland, Ohio, May 29, 1877.

The valuation as assessed and returned by the county auditor and the county board of equalization upon the shares of the within named bank, are as follows:

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by the county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
2,000	$100	.....	$150,000	$150,000

L. D. BENEDICT,
County Auditor.

50 SCHEDULE 7.

First National Bank, Berea, Ohio.

Resources.		Liabilities.	
U. S. bonds to secure circulation	50	Capital stock	50,000
Premiums paid	2,500	Circulation	45,000
Real estate	6,700	Surplus	5,450
Furniture & fixtures	3,300	Profit and loss	4,343 62
Expenses	927 76	Bills payable	600
Taxes paid	1,102 98	Due depositors	52,748 21
Bills discounted	51,073 32		
Bonds	5,550		
Importers' & Trad. B'k, New York	6,687 49		
Other national banks	16,350 78		
Sundry banks	257 64		
U. S. Treasurer 5% fund	2,950 00		
Legal tender on hand	6,586		
Cash on hand	4,101 86		
Total	158,141 83	Total	158,141 83

COUNTY AUDITOR'S OFFICE,
Cleveland, O., May 29, 1877.

The valuations as assessed and returned by the county auditor and county board of equalization upon the shares of the within named bank are as follows:

Number of shares.	Par value per share.	Assessed value of real estate owned by bank.	Valuation by county auditor after deducting assessed value of real estate.	Valuation for taxation as equalized by the county board of equalization.
500	$100	$1,650	$30,000	$30,000

L. D. BENEDICT,
County Auditor.

51 The following is a description and the assessed valuation of the real estate owned by the aforesaid bank, to wit:
Sub lot D, W. P. of 42 ft., 22 ft. front on Front st., $3,650.

The foregoing deposition was taken by agreement of counsel for complainant and respondent, notice thereof being waived, and it is stipulated and agreed that it may be used in evidence as far as competent in the case in which the same was taken, and also in the following cases, all pending in the U. S. circuit court of the northern district of Ohio against the same respondent, to wit:

No. 3563. Commercial National Bank, complainant.
No. 3564, Merchants' National Bank, complainant.
No. 3565. First National Bank, Cleveland, complainant.
No. 3566. National City Bank, complainant.
No. 3567. Second National Bank, complainant.
No. 3568. First National Bank, Berea, complainant.

GRANNIS AND GRISWOLD,
Counsel for Respondent.
C. C. BALDWIN,
Of Counsel for Complainant.

52 (Copy.)

Know all men by these presents, that we, Frederick W. Pelton, treasurer Cuyahoga County, Ohio, as principal, and Charles Jackson, as surety, are held and firmly bound unto the Commercial National Bank of Cleveland, Ohio, in the sum of five hundred dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 18th day of March, in the year of our Lord one thousand eight hundred and seventy nine.

Whereas the above bounden Frederick W. Pelton, treasurer, &c., has appealed to the next Supreme Court of the United States from a decree of the circuit court of the United States for the northern district of Ohio, bearing date the 18th day of March, A. D. 1879, in a cause wherein the said Frederick W. Pelton, treasurer, &c., was respondent, and the said Commercial National Bank of Cleveland, Ohio, was complainant:

Now, therefore, the condition of this obligation is such that if the above-named appellant, Frederick W. Pelton, shall prosecute his appeal with effect, and pay all such damages, costs, and expenses, as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) FREDERICK W. PELTON, [SEAL.]
By GRANNIS & GRISWOLD,
His Att'ys in Fact.
CHARLES JACKSON, [SEAL.]

Sealed and delivered in presence of—
W. H. BREW.
AD. MILLARD.

(Indorsed:) No. 3563. In the circuit court of the United States for the northern district of Ohio. Commercial National Bank of Cleveland, O., vs. Frederick W. Pelton, treas'r Cuyahoga Co. Appeal bond.

Approved and filed March 21st, 1879.

M. WELKER, *Judge.*

53 *Injunction bond.*

Know all men by these presents, that we, the Commercial National Bank of Cleveland, Ohio, as principal, and Solon Burgess, as surety, are held and firmly bound unto Frederick W. Pelton, treasurer of Cuyahoga County, Ohio, in the sum of fourteen thousand three hundred dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this 19th day of December, A. D. 1877.

The condition of the above obligation is such that, whereas the said Commercial National Bank has filed in the circuit court of the United States for the northern district of Ohio a bill in chancery against the said Frederick W. Pelton, treasurer as aforesaid, and have obtained an allowance of an injunction as prayed for in said bill from the said court:

Now, if the said Commercial National Bank shall abide the decision of said court in said cause, and pay all moneys and costs which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void, otherwise to remain in full force.

THE COMMERCIAL NATIONAL BANK,
By J. COLWELL, *Cashier.* [SEAL.]
SOLON BURGESS. [SEAL.]

54 *Certificate.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein the Commercial National Bank of Cleveland, Ohio, is the complainant and Frederick W. Pelton, treasurer of Cuyahoga County, Ohio, is the defendant, as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at my office in Cleveland, in said district, this 31 day of March, A. D. 1879, and in the 103rd year of the Independence of the United States of America.

[SEAL.] AUGUSTUS J. RICKS, *Clerk.*

(Indorsement on cover:) No. 827. Frederick W. Pelton, treasurer of Cuyahoga County, Ohio, appellant, vs. The Commercial National Bank of Cleveland, Ohio. N. Ohio C. C. U. S. Filed 19th September, 1879.

REC. 827—3

Supreme Court of the United States.

FREDERICK W. PELTON,
TREASURER OF CUYAHOGA COUNTY, OHIO,
Appellant,

VS.

THE COMMERCIAL NATIONAL BANK,
OF CLEVELAND, OHIO,
Appellee.

No. 827.

ARGUMENT FOR APPELLANT.

GRANNIS & GRISWOLD,
Solicitors.

Fairbanks & Co. Print. 16 & 18 Frankfort St., between Bank and Water, Cleveland.

Supreme Court of the United States.

FREDERICK W. PELTON,
TREASURER OF CUYAHOGA COUNTY, OHIO,
Appellant,

VS.

THE COMMERCIAL NATIONAL BANK,
OF CLEVELAND, OHIO,
Appellee.

ARGUMENT OF GRANNIS & GRISWOLD FOR APPELLANT.

The appellee is a National Bank, located in the City of Cleveland, County of Cuyahoga, Ohio, having a capital stock of $1,250,000.

For the year 1877 the shares of said Bank were valued and placed for taxation on the duplicate of said county, under an Act of the General Assembly of the State of Ohio, passed April 12, 1877, O. L. vol. 74, page 88.

The Act is entitled, "An Act to provide for the equalization of the valuation of bank shares for taxation, and to repeal an Act therein named."

SECTION 1. Be it enacted by the General Assembly of the State of Ohio, That it shall be the duty of the cashier of each bank or banking association, located in this State, whether incorporated or organized under the laws of this State, or of

the United States, to make out and return to the auditor of the county, on or before the second Monday in May, annually, a report in duplicate, under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such report, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share.

SEC. 2. It shall be the duty of the auditor of the county in which such bank is located, to assess the value of the shares of such banks according to their true value in money, from which deduction shall be made as required by the fifth section of the Act entitled, "An Act to provide for the taxation of bank shares and bankers," passed April 16, 1867, and immediately after he shall have so determined and assessed the value of the shares of such bank or banking association, to make out and transmit to the annual board of equalization of the county in which such bank is situated, a copy of the statement made and returned by the cashier of such bank or banking association, together with the valuation of such shares for taxation, as determined by such county auditor.

SEC. 3. The board of equalization designated in section two, shall have power to hear complaints, and shall equalize the valuation of the shares of such bank or banking association, so fixed and determined by said county auditor, and with full authority to equalize said shares according to their true value in money.

SEC. 4. When said board of equalization, designated in section two of this Act, shall have equalized and determined the valuation of the shares of such bank or banking association, it shall be the duty of the auditor of the county in which such bank or banking association is situated, to make out and transmit to the auditor of State a

copy of the statement made to him by the cashier of such bank or banking association, together with the valuation of the shares for taxation, as equalized and determined by the board of equalization, designated in section two of this Act.

SEC. 5. That the auditor of State, treasurer of State, and attorney-general shall constitute a board of equalization of the shares of such banks or banking associations of this State, as fixed and determined by the several county auditors and county boards of equalization, for the purpose of taxation, under the provisions of said Act; said board shall meet on the third Tuesday of June, at the office of the auditor of State in Columbus, and shall have power to hear complaints and to equalize the valuation of the shares of such banks or banking associations, as fixed and determined by the several county auditors or county boards of equalization under said Act; not, however, increasing or decreasing the aggregate value of the amount returned by the county auditors or county boards of equalization, more than one hundred thousand dollars.

SEC. 6. The Auditor of state shall, forthwith, after such equalization shall have been made by said board, certify to the auditor of the proper county the valuation of the shares of such bank or banking association as equalized by said board, and said shares shall thereupon be charged with the taxes upon the duplicate at such valuation for said year.

SEC. 7. That the act entitled "An act to provide for the equalization of the valuation of bank shares for taxation passed April 12, 1876 (O. L. Vol. 73 p. 251) be and the same is hereby repealed.

SEC. 8. This act shall take effect and be in force from and after its passage.

The only material difference between this act and the act of April 12th 1876, by and under which the shares of National Banks were then valued and taxed, is, that the val-

uation by the county auditor as provided in that statute is reviewed by an annual county board of equalization before it is transmitted to the State Board of Equalization. The valuation of the shares of Complainants Bank by the County board for the year 1877 was the same as that by the county auditor, who placed the value at 73 per cent. of the par value of the shares. The State Board increased this valuation to 93 per cent. of the par value, and this valuation, less the assessed value of the real estate of the bank, was placed on the duplicate, and on this valuation the shares were taxed at the same rate as other property in the City of Cleveland. The bank tendered to the appellant a sum which was equal in amount to what the tax would have been, had the shares been placed on the duplicate at the valuation made by the county officials, and obtained an injunction against the 20 per cent of the tax based on the increased valuation by the State Board. The decree rendered by the Circuit Judge perpetually enjoined this 20 per cent. of the tax and to reverse that decree, the appellant brings the case to this tribunal.

The appellant seeks to reverse the decree, because upon the record there appears no legal ground for declaring the tax illegal or void. There is no pretence or claim but that the tax was regularly levied, in strict accordance with the above statute, upon the shares of the bank and the same placed on the county duplicate and duly handed over to the appellant for collection.

The appellee in its bill of complaint makes the following averments as to the taxation on its shareholders.

"First. They are not taxed by any law prescribing any "uniform rate for the valuation of their property and levy- "ing taxes thereon in common with all other property, as "provided by the constitution, nor do the said acts, under "which the taxes purport to be assessed, although general "in their nature, have a uniform operation throughout the "State, as required by the 26th section of article 2nd of the "constitution of said State.

"Second. Their property in this corporation is not "valued and taxed the same as the property of individuals, "and the burden of taxation upon it is very much greater, "nor has any equality been preserved in the valuation of "the shares for taxation compared with other property in "the locality where the bank is established; on the con- "trary, the valuation in proportion to the market value is "fully twice as much as that fixed upon other property, "while the rate of levy is the same.

"Third. The board constituted by the fifth section of "said act of 1877 was and is illegally constituted, the mem- "bers thereof having been appointed by the general assem- "bly in contravention of the 27th section of the second "article of the constitution of the State, which provides "that 'no appointing power shall be exercised by the gen- "eral assembly,' and the duties devolved upon them of "fixing valuations upon said shares of National Banks, and "changing those fixed by county boards of equalization "without reference to any other property, and without any "duty imposed or any means afforded of equalizing the "valuations of such shares with the valuations fixed upon "the various other subjects of taxation, destroys the "uniformity of the rule fixed by the constitution, and vio- "lates the obligation thereby imposed to treat all property "alike, to the end that all property may bear an equal burden "of taxation, and is subversive of the act of Congress allow- "ing such shares to be taxed, and intended to protect the "owners thereof from greater burdens than were imposed "upon other moneyed capital, at the place where the bank "was located.

"Fourth. The proceedings of said board were irregu- "lar, illegal and of no binding obligation. While said act "purports to give authority to hear complaints and to "equalize the valuation of shares as fixed and returned by "the several county auditors or county boards of equaliza- "tion, not increasing the aggregate more than $100,000.00,

"yet your orator avers that the said board has proceeded "without any complaint made against the valuation made "by said auditor and county board, and without any notice "to your orator or the other National Banks located in said "city and county, or the shareholders, to increase arbitrar- "ily the valuations for taxation more than $800,000.00 "upon the said shareholders without any hearing, or op- "portunity for hearing, as is fairly required by said act.

"Fifth. The necessary effect of the proceedings had in "the assessment and levy of the taxes standing against the "shareholders of your orator, and now about to be enforced, "has been to deprive such shareholders, both in the matter "of valuation and equalization, of all benefit of the consti- "tution and general laws of the State, by which only "uniformity in the burdens of taxation upon all descrip- "tions of property could be secured, to take from them the "security afforded by the limitation in the Act of Congress, "and to impose upon them such excessive exaction as to "make the franchises granted by said Act comparatively "valueless."

The answer expressly denies the averment in the second statement above quoted, and denies that the Act of 1877 in any manner contravenes the constitution of the State of Ohio, or the restriction placed on the State with regard to the taxation of National Bank shares, by the national banking Act. The answer then proceeds to aver and set out the tax system of the State of Ohio, and that the tax in question was regularly assessed and levied in accordance with the constitution and laws of the State, and avers these laws in no way controvene the restrictions of the National Bank Act.

As above observed, the second statement in the bill is expressly denied in the answer. It is not therein claimed the rate of levy on the shares is different from that imposed on other property or moneyed capital. We readily concede where the rate is uniform, a rule or standard of valuation

for bank shares different from that applied to other property, would, if a higher standard, be a taxation greater than that on other property, and would fall within the restriction of the National Bank Act. The statement of the bill, however, contains no such averment. It simply states that in proportion to their market value these shares are valued fully twice as high as other property, and that their burden of taxation is greater than that of other property. This is simply an averment that these shares are proportionately valued higher than other property, and does not militate against any step taken in the process of valuation, or state whether the alleged overvaluation occured through any fault, accident or design of any official, in any step in arriving at the value of the shares for taxation. In order to bring the case within the restriction of the National Bank act the bill should aver the valuation upon these shares is greater than that placed on the moneyed capital of individual citizens, while they are subjected to the same rate of levy. If by possibility this statement can be considered as making such an averment, we reply it is wholly unsustained by the proof.

But one witness was examined, viz: the auditor of Cuyahoga county for the year 1877, who was, ex-officio, also a member of the County Board of Equalization.

THE TESTIMONY.

"L. D. Benedict, being duly sworn, deposes and says: "That he is fifty years of age, and that he was auditor of "said Cuyahoga county, Ohio, for the years 1876 and 1877, "and had been previously for a number of years an em- "ployee in the auditor's office in said county.

"As such county auditor I was a member of the "board of county equalization, and acted as a member of "the board in equalizing the valuation of the shares of the "various national and other banks in said Cuyahoga county "during those years.

"*Q.* State how the valuation placed by the county "board of equalization upon the shares of the various "National Banks of Cuyahoga county in May, 1877, com- "pared with the valuation for taxation of other personal "property, including banking capital.

"(Objected to by defendant's attorney.)

"*A.* I was of the impression at the time, and am now, "that it was a little higher in proportion. I know the mat- "ter was talked over by our board, and it was our aim to "make the assessment so that it should compare favorably "with other taxable property.

"*Q.* State how it compared with the valuation upon "other banking capital.

"(Objected to by defendant's attorney.)

"*A.* I think that the value we placed on the National "Banks was higher than the assessed value returned by "private banks.

"*A.* State how the valuation placed by that board upon "the National Bank shares compared with the valuation "appearing upon the tax-books of real estate in Cuyahoga "county.

"(Objected to by defendant's attorney.)

"*A.* I could not form any opinion on that subject. "Our board had nothing to do with real estate except upon "complaint of parties.

"*Q.* From your acquaintance with the valuation of real "estate appearing upon the auditor's books for the year "1877, what proportion should you say the assessed value "of real estate did bear to its then cash value?

"(Objected to by defendant's attorney.)

"*A.* I don't think it would exceed 45 per cent. take "aggregate.

"CROSS EXAMINED.

"*Q.* State whether the county board of equalization at "the time they passed upon the valuation of the shares of

"the different banks in Cuyahoga County had before them "the sworn returns of the resources and liabilities of the "said banks made by the cashiers as required by law in the "month of May of that year.

"*A.* We did."

"*Q.* Please look at the papers exhibited to you, copies "of which, so far as relates to the resources and liabilities "of said banks, are marked Schedules 1, 2, 3, 4, 5, 6, and "7, and state what they are.

"*A.* They are the returns made to me as auditor by the cashiers of the banks, of the resources and liabilities for "that year. Schedule 1 is the statement of the First Nat- "ional Bank, Cleveland: 2, of the Second National: 3, of "the Commercial National; 4, the Ohio National; 5, the "Merchant's National; and 6, the National City Bank of "Cleveland, and 7, of the First National Bank of Berea. "The addenda to each schedule is the valuation for taxa- "tion as assessed by the county board of equalization.

"*Q.* Referring to the statement of resources of the "First National Bank as set forth in the schedule which is "made part of your answer, there is the item United States "bonds to secure circulation, $300,000: will you state, if "you can, what valuation, if any, the county board placed "upon these bonds in arriving at a valuation of the shares of "said banks?

"*A.* I can't state. I don't think we placed any valua- "tion on them.

"*Q.* In the same schedule it appears that the loans of "said bank amounted to $697,563.60. State if the County "board made an estimate of the then cash value of said "loans in their arriving at the valuation of the shares of "said bank.

"*A.* There was an estimate made, and quite a large "deduction made.

"*Q.* This bank had a surplus, it appears of one-third

"can you state whether the deduction from the loans was "greater than the one-seventh part thereof.

"*A.* I can't state. We preserved figures for some "time, but they got lost?

"*Q.* Did the board make any investigation as to the "responsibility of the parties to whom the loans were "made in order to ascertain the cash value of said loans?

"*A.* No.

"*Q.* State whether the statement as to the action of the "board in the valuation of the shares of the First National "Bank, Cleveland, given in answer to the interrogation of "defendant's counsel, is true as to the valuation of the "shares of the other banks named.

"*A.* The same as to each of the banks. My answer "would be the same as to each of the banks.

"*Q.* State, if you know, if the money of any individual "citizen of Cuyahoga County invested in a bond of equal "value to the United States bonds owned by the banks was "assessed upon the duplicate at less than the face of such "bond.

"*A.* No: I don't know of any.

"*Q.* State whether or not the assessors for the different "wards and towns in the County of Cuyahoga did not have "instructions to return all personal property and buildings "at their true value in money.

"(Objected to by plaintiff's attorney.)

"*A.* They were furnished with printed forms, containing "the law, which require them to return all such property at its true value in money.

"(Answer objected to by plaintiff's attorney.)

"*Q.* Were you aware, as auditor, or as a member of "the board, that any assessor that year—the year 1877—"knowingly or willfully neglected to perform the duty "required of him by law.

"(Objected to by plaintiff's attorney.)

"*A.* No sir.

"*Q.* State whether or not any of the above mentioned "banks, or any person representing them, made any com- "plaint to your board that the vaiuation of the property of "any of the citizens of the county was returned, either by "such citizens, or by the assessors, at less than the true "value in money of such property.

"(Objected to by plaintiff's attorney.)

"*A.* I can't say that they did.

"*Q.* In case complaints were made before your board "that any particular property or money invested of the "citizen of the county was returned or appraised at less "than its true value, did your board entertain such com- "plaint and proceed to act upon the complaint and ascer- "tain the true value thereof?

"(Objected to by plaintiff's attorney.)

"*A.* We did,

"*Q.* In this county, there being a city of the first class, "there was also a city board of equalization of which you "were a member, was there not? And, if so, whether "jurisdiction as to the matter of complaint, etc., was the "same as the county board and confined to the limits of "the city;

"(Objected to by plaintiff's attorney.)

"*A.* There was such a board and its jurisdication was "the same.

"*Q.* State whether or not, before this city board so called, "the banks or any one representing them made complaints "that the personal property of the citizens of Cleveland and "their moneys invested in securities or otherwise, was either "returned by them or by the assessor at less than the true "value in money?

"(Objected to by plaintiff's attorney.)

"*A.* I can't state that they did: but if any complaint "was made, it was investigated by the board and acted "upon. In one case I remember we raised the return of "an individual banker some $30,000.

"(Answer objected to by plaintiff's attorney.)

"*Q.* Can you now state of any particular piece of land "or real estate that was assessed at less than its true "value in money; and if so, can you give the assessed "value thereof, and what, in your judgment, was its true "value in money?

"*A.* I don't know as I can call to mind any particular "piece.

"RE-DIRECT EXAMINATION.

"*Q.* Can you call to mind any piece of real estate that "was assessed for taxation at its full cash value.

"(Question objected to by defendant's attorney.)

"*A.* No sir: I cannot.

"*Q.* Can you tell how the assessment upon the National "Banks of the city of Cleveland compared in amount with "the entire assessment of other personal property in the "City of Cleveland that year.

"(Objected to by defendant's attorney.)

"*A.* I cannot; but my memory is it was about one "tenth.

"RE-CROSS EXAMINATION.

"Q. I will ask you if you knew of any sales of any "shares of the national banks of Cleveland at less than par?

"*A.* I knew of no sales.

"L. D. BENEDICT."

RE-EXAMINATION OF THE SAME WITNESS.

"*Q.* Can you tell how the assessment upon the National "Banks of the city of Cleveland compared in amount with "the entire assessment of other personal property in the "city of Cleveland that year.

"(Question objected to by defendant's attorney.)

"*A.* The entire personal property of the city, exclusive "of National Banks, amounted to $15,518,048. The value

"of the bank shares as equalized by the county board "amounted to $3,236,500, and as equalized by the state "board amounted to the sum of $4,046,045. When a "similar question was asked in my former examination, it "was misunderstood by me.

"L. D. BENEDICT."

The appellant objected to all this testimony, but the officer who took the deposition had no power to pass upon its competency, and therefore it all appears in the record. The answers to the questions are the mere opinions and impressions of the witness, and state substantially no matter of fact. By no rule of evidence known to the law, was this testimony competent, but if it could by any possibility be admitted for any purpose, the cross-examination discloses a state of facts, which renders the evidence utterly worthless, as tending to prove any issue joined between the parties. The witness expressly states he knew of no sales of the stock of any of the banks, and therefore could have had no knowledge of their market value. The cross-examination shows this board had before them the return of the bank which is set forth in schedule 3, page 20 of the printed record. The assets consisted of bonds, coin, legal tender notes, loans and discounts, dues from banks, bankers and the United States treasurer, notes of other national banks and the bank building. From this statement it appears this bank's surplus was one-fifth of its capital stock. The witness made no estimate of the value of the bonds, and no enquiry as to the value of the securities which the bank held for its loans and discounts.

On the face of the return the apparent value of the stock was 20 per cent. above par. Conceding the overdue notes and bills to be absolutely worthless, and the other securities to be worth their face, and the stock was still worth over 15 per cent. above par, yet, without any inquiry as to the value of these securities, this official valued the

stock at 27 per cent. below par. When it is borne in mind this board was under oath to value these shares at their true value in money, and, without any knowledge or any attempt to acquire any, this witness and his board valued these shares at over 40 per cent. below their apparent value, it is submitted the utter worthlessness of his evidence to sustain any issue made is clearly manifest.

The four remaining statements of the complainant's bill, when stripped of their verbiage, assail the tax levied on these bank shares, on the ground the aforesaid act of April 12th, 1877, was unconstitutional and void, and hence the tax levied is wholly illegal. The bill concedes the bank shares should be taxed, but it assumes the tax to be assessed, ought to have been levied at the valuation arrived at by the county officials:

Firstly, it is alleged the act is invalid from being in contravention of sections 26 and 27 of the 2d article of the constitution of the State of Ohio, and secondly, that in its operation it conflicts with the 2d and 3d sections of the 12th article and the 4th section of the 13th article of the State Constitution.

These sections are as follows:

ARTICLE II.

SEC. 26. All laws of a general nature shall have a uniform operation throughout the State, nor shall any act except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly except as otherwise provided in this constitution.

SEC. 27. The election and appointment of all officers, and the filling of all vacancies not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the general

assembly except as prescribed in this constitution, and in the election of United States senators; and in these cases the vote shall be taken "*viva voce*."

ARTICLE XII.

SEC. 2. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; and also all real and personal property according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars for each individual, may, by general laws, be exempted from taxation: but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

SEC. 3. The general assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property effects or dues of every description (without deduction,) of all banks now existing, or hereafter created, and of all bankers, so that all capital employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals.

ARTICLE XIII.

SEC. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

SECTION 27.

The objection that this act falls within the prohibition of the 27th section of the constitution has no substantial foundation. These officers are not appointed by the Legislature

and their offices are not established by legislation, but they are created by the constitution, and are filled by popular election. The constitution does not prescribe their duties but provides this shall be done by the General Assembly. No objection could be made to adding, at any time, to the duties to be performed by any one of these officers, and the objection must rest in the fact that they are required by this act to perform certain duties jointly.

The rule of constitutional interpretation to be applied to the legislation of the General Assembly of the State of Ohio, is the exact converse of the rule to be applied to the acts of Congress under the constitution of the United States. All the legislative power of the state is vested in the General Assembly. No act can be held unconstitutional, which is a proper exercise of legislative power unless falling within some express prohibition, or in direct violation of the spirit of some requirement of the organic law.

Baker vs. Cincinnati, 11 O. S. 534, Lehman vs. McBride 15 O. S. 573.

The adoption of methods for the valuation of property for taxation is the exercise of purely legislative power, and the legislature has unlimited choice of the methods to be pursued except in so far as some particlar prohibition, or requirement of the constitution shall prevent. An addition to the duties of an officer cannot be any appointment to office, and we fail to see how the further requirement that certain officers shall perform certain duties jointly can make any difference.

This particular section, however, has been construed by the Supreme Court of the State in

State vs. Kennon 7 O. S. 546.

State vs. The Judges, &c., 21 O. S. 1.

Mr. Justice Swan in his concuring opinion in the case in the 7th Ohio State holding the particular act there under consideration to fall within the prohibition of the section, anticipates the question here made.

He says: "If the General Assembly annex to an office "already existing and filled, additional power and duties, "upon what ground can it be claimed that this is the exer- "cise by the General Assembly of the appointing power. "Certainly upon this only, that the General Assembly has "enlarged or added to the powers and duties of an exist- "ing office. But this is really absurd; for, if adding to the "duties or powers of an existing office is an exercise of the "appointing power then every new duty required, or "power conferred upon any State, County or Town- "ship officer must be deemed the exercise of the ap- "pointing power and forbidden by the constitution."

In the latter case the judges of the Court of Common Pleas of Hamilton county, by the act of April 6th, 1870,—67 O. L., 36—were required to perform certain duties as to the compensation of the deputies and clerks of the several county officers of Hamilton county, and the Court say: "We have no hesitation in saying that, in our opinion, the "act does not create or invest them with a new office. "What they are authorized to do, they can only do by vir- "tue of their office as judges. It does not follow from the "fact that the new duties or powers might have constituted "a new office, that, therefore, they do constitute such "office. New duties may as well be attached to an exist- "ing office, as that part of the duties of an existing office "may be assigned to a new one." This act was subse- quently changed so as to require the judges to appoint a "Commissioner of Costs and Fees." This act was also in the same decision under consideration and held to be constitutional.

This bank was perfectly willing to be taxed on the valuation placed upon its shares by the annual county board. This board was composed of the Auditor, Survey- or, and Commissioners of the County of Cuyahoga, officials who are elected by the people of this county to

offices which existed before the adoption of the Constitution of 1851, and which are recognized by it. Particular duties were prescribed to these officials by the original acts creating the offices, which duties have been enlarged and varied from time to time. The act requiring them to perform certain duties jointly as an equalizing board was passed long after the establishment of the offices, and the board from time to time has been changed with respect to the particular county officials of whom it is composed, all of whom hold their offices for different terms.

If the provision in the act of 1877 requiring the officials composing this State board to act jointly or to act at all, is an appointment to office by the General Assembly, then the county boards are appointed to office. Their valuation is equally null and void, with that of the State Board. It is submitted this objection to the act is not well taken.

OHIO TAX SYSTEM.

To properly determine whether or not this act fails to comply with the requirements of section 26 of article two, and whether or not it violates the letter or spirit of the provisions referred to in the 12th and 13th articles of the constitution, it becomes important to consider the general system of taxation in the State of Ohio under the constitution of 1851.

By the first general assembly convening after the adoption of the constitution a general act was passed for the taxation of all property within the State: (April 12th, 1852, O. L. Vol. 50, page 135, Curwin's statutes, Vol. 3, page 1760). This act was amended somewhat from year to year until 1859, when it was repealed by a new act embracing all the general features of the old with such additions and changes as the experience of previous years had suggested as necessary to carry out the system: [April 5th, 1859, O. L. Vol. 56, page 175.] There have been some subsequent modification of particular sections, but the sytem established by

the act of 1852, as perfected by the legislation of 1859, is substantially in force at the present time.

The principal features of this system are:

First—All real estate is taxed irrespective of its ownership; every deed, before it is recorded, is required to pass through the auditor's office, and, in whosoever name land appears to be owned on a particular day of each year, the land is listed and taxed. Provision is made for a decennial appraisement of all the land within the State. District assessors are elected in the respective counties, to each of whom the county auditor is required to furnish the proper description of every parcel of land within their respective districts, and who are required to make a valuation of each parcel of land, and of the buildings thereon, at their true value in money. These valuations are to be returned to a county board who are to equalize the appraisements and to determine the value of every parcel of land, and of the buildings so returned at their true value in money. The valuation by the county board is returned to a State board, the members of which are elected from the respective senatorial districts in the State, and it is the duty of the State board to equalize the valuations made by the county boards and to return the equalized valuation to the counties, and upon the valuations so finally determined by the State board the land is listed and taxed. In the interval between the decennial periods, the local assessors in each township and ward are required to make annual returns of the value of the new structures erected during the year, which returns are subject to revision by the county boards, and the respective county boards may add to any and every parcel of land any additional value which it has or may acquire from year to year. They may also reduce the valuation of particular parcels, but cannot reduce the aggregate below that fixed by the decennial appraisement.

The original act of 1852 provided for a special board for the city of Cincinnati to be composed of the county auditor

and six citizens of the city to be appointed by the city council, while for the rest of Hamilton county and for all other counties the annual board was composed of the county commissioners and the county auditor, and to these the county surveyor has since been added. This special provision, at first applied to Cincinnati only, has since from time to time been extended to all the principal cities in the State.

Second—The valuation of personal property is arrived at by an entirely different method. It is made the primary duty of every citizen to make out a complete list of his personal estate and of that which is under his personal control in any fiduciary capacity and to place thereon, under his personal oath, its true value in money. It is also the duty of the chief officer of every corporation to make out a complete schedule, under oath, of all the personal property of such corporation. In these lists so made out by the citizen in his individual capacity, or as an officer of a corporation, he is required to return, under his personal oath, all moneys, securities and all other kinds of moneyed capital which he, or the corporation possesses, at its true value in money. It is no part of the primary duty of any local assessor to make a valuation of any personal property, but it is their duty, in the first instance, to furnish printed blanks, prepared by the State, to the individual citizens in order to enable them to make out the lists required by law. These blanks, when filled out, it is the duty of the assessor to collect and return to the county auditor, at the same time administering the oath required to be taken by the parties. If, for any reason, a citizen fails to make out his return, it then becomes the duty of the local assessor to find out the property of such delinquent citizen and to return a list of the same to the auditor. If a citizen refuses to make out his list, or to make oath thereto, the county auditor may impose a penalty by adding to the valuation as returned by the local assessor, and extraordinary powers are vested

in the county auditor to enable him to obtain from each citizen a true return of all his personal property. The returns so made to the county auditor may be revised by the general county boards, so far as the county is concerned, and by the special boards in the cities, and the chief duty of assessors, auditors, and equalizing boards, in regard to valuation of personal property for taxation is the correction of errors, and the supplying of omissions on the part of individual citizens.

In regard to the returns of corporations which are to be made out and verified as above stated, the general rule is that the return is to be made direct to the county auditor and is subject to the revision of the county and special boards the same as the returns of individual citizens. This was the provision as to banks and banking companies in the act of 1852, and it was applied to all other corporations, including railroad companies, by a subsequent amendment. By the act of 1859, however, it was made the duty of all banks, having the privilege of issuing notes, to make their returns directly to the auditor of state, and he determined the valuation of the property thereon. This provision was changed in 1861 by an act (O. L. vol. 58 page 59,) requiring banks to deliver their returns to the local assessor who was to make return therof to the county auditor the same as the returns of individual citizens, and these returns were subject to revision by the county and city boards. The last named act remained in force until 1867, when an act was passed requiring all shares in any bank or banking association located in the state, whether organized under the laws of the state or of the United States, to be listed at their true value in money, and taxed in the city, ward or township in which such bank or banking association was located. Under this act, the return was made directly to the county auditor who fixed the valuation of the shares and his valuation was, in like manner, subject to revision by the county or special boards, as the case might be. Railroad

corporations continued to be valued under the acts of 1852 and 1859 until 1862, when a provision was made for a special board for the valuation of the property of railroad companies. (O. L. Vol. 59 page 88). Under this act it was the duty of the railroad company to make a sworn return, to the auditor of the county in which its principal office was situated, of all its property, and a board was constituted, consisting of the several auditors of the counties through which the line of the railroad passed or into which it might enter, who, upon this return and such examination as they might make, were authorized to value the property of the railroad company, and distribute the valuation among their respective counties. From the decision of this board, the railroad company was authorized to appeal to the auditor of state who could make the final valuation. Shortly afterwards this act was amended, and the auditor of state, the treasurer of state and the attorney-general were constituted the board of appeal and authorized to make the final valuation of the property of railroad companies, and this law is now in force, the board of appeal being composed of the same state officers as the board of equalization here complained of (O. L. Vol. 64, page 58).

The act of 1867 in regard to banks and banking associations remained in force until 1876, when the 4th section was repealed by a provision requiring the valuation by the county auditor to be returned to the board composed of the auditor of state, the treasurer of state and the attorney-general. The act of 1876 was repealed April 12th, 1877, by the act above given, and, as above stated, the only substantial difference between the act of 1876 and that of 1877 is the requirement that the valuation by the county auditor shall be revised by the annual county board of equalization before it is submitted to the state board of equalization for final action.

SECTION 26, ARTICLE 2.

To maintain the act of April 12th, 1877, violates this provision of the constitution, it is necessary for the appellee to show: First, the act is one of a general nature, and second, it does not have a uniform operation throughout the state. It is to be regretted the framers of the constitution did not define the term "general laws" or what was intended by "a uniform operation throughout the state." It is one of those vague general statements which invariably leads to litigation and difficulty. It cannot be affirmed the act is not general in its terms; or that it does not operate uniformly throughout the state. The objection raised by the appellee is based on the requirement of the act, which provides for a valuation by a state board of all shares of banks and banking associations after they have been valued by the county auditor and a county board of equalization, a provision not applied generally to other personal property. The provision in the act, for a county equalization by a board different from that which was to finally equalize the valuation of the property and moneyed capital of the individual citizens of the city of Cleveland in which the bank is located and taxed, would seem a much more serious objection to it, inasmuch as the shares of the bank are subject to the same taxation which is imposed on the personal property of the individual citizens of that municipality. The fallacy of this objection is apparent, when it is borne in mind that the valuation of the property of the individual citizens is not made in the first instance by any board whatever.

The objection made by the appellee involves the affirmance of this extraordinary proposition, viz: that all property in the State of Ohio must be valued by the same agency, otherwise the taxation is illegal and void. Neither the constitution, nor the legislation of the state for the purposes of taxation recognize any difference in property, whether it be lands or personal property of whatsoever description, but every

species is subject to taxation by one uniform rule prescribed alike to officials, individuals and corporations, viz: The valuation of the property at its true value in money.

The laws for the valuation of real property are general and uniform in their operation throughout the state. So likewise are the laws for the valuation of the personal property of individual citizens. The conscience and intelligence of the citizen is relied upon for the listing and valuation of all the property of which he is the owner. As to particular classes of property, as for example, railroads, banks and some other corporations, the making of the return or list is devolved upon its chief officer, and the provision for the valuation to be placed upon the return so made is uniform in its operation upon the distinctive classes of corporations provided for in the several acts. All railroads are valued in the same manner. All shares in banks are valued in the same manner, and other corporations are subject to a like law for the valuation of their property and the equalization thereof, and these statutes operate equally throughout the state on all persons in like situation, and apply equally to all property which comes within their operation.

To give to this particular provision so wide a scope as to require that all property must, for the purposes of taxation, be valued by the same board, or by means of the same agency, is to render the whole system a nullity, and, substantially, to divest the general assembly of all legislative discretion upon the subject.

It is submitted no such conclusion will be reached by this court, but in accordance with its well settled rule, it will feel itself constrained to follow the Supreme Court of Ohio in the construction which it has given to its own constitution.

This provision was first considered by the Supreme Court in Cass vs. Dillon, 2 O. S. 607, in which it was held that an act authorizing a county to subscribe to the capital

stock of a railroad company was not a general law within the meaning of the 26th section.

The next case was Kelly vs. The State, 6 O. S. 269.

Here by act of 1853 (O. L. Vol. 51, page 166) regulating the jurisdiction of probate courts, that court was vested with exclusive jurisdiction over certain minor offences and misdemeanors. This act was amended in 1856 (O. L. Vol. 53, page 107), and in certain counties the courts of common pleas were given jurisdiction over these offences and misdemeanors. Kelly was convicted of one of these offences in the common pleas in one of the counties in which that court was thus given jurisdiction. His case came before the Supreme Court, and that tribunal held, the act fell within the scope of the 26th section: The court says: "Without undertaking to discriminate nicely or define "with precision, it may be said that the character of a law "as general or local, depends on the character of its subject "matter. If that be of a general nature, existing throughout "the state, in every county, a subject matter in which all the "citizens have a common interest,—if it be a court organized "under the constitution and laws, within and for every "county of the state, and possessing a legitimate jurisdic-"tion over every citizen, then the laws which relate to and "regulate it are laws of a general nature, and by virtue of "the prohibition referred to, must have a uniform operation "throughout the state." Two judges dissented on the ground that there was express authority in the judicial article of the constitution to clothe the court of common pleas with different jurisdiction in different counties.

This provision was again considered in Lehman vs. McBride, 15 O. S. 573. The court say: "Under the former "constitution, laws having a general subject matter, and, "therefore, "of a general nature," were frequently limited "expressly in their operation, to one or more counties, to "the exclusion of other portions of the state. As a con-"sequence on the same subject, there might be one law for

"Hamilton county, another for Franklin, and still a third "for Ashtabula. This naturally led to improvident legisla- "tion, enacted by the votes of the legislators who were in- "different in the premises, because their own immediate "constituents were not to be affected by it. To arrest and, "for the future, prevent this evil, the provision in question "was inserted in the present constitution. But the law in "question is the *same* for every part of the state; its "operation is "uniform throughout the state." * * "* "Many statutes are intended to operate exclusively "or mainly upon certain classes of persons; as for ex- "ample, upon attorneys-at-law, auctioneers, brokers and "bankers, etc.; criminal laws impose their penal sanctions "only upon transgressors; and the elective franchise itself, "is, by the constitution limited to a class of citizens com- "posing less than one-fourth of the whole." * * * "Yet, it is apparent that all such enactments, though "operating only on classes of persons, do not, for that "reason, fail to have a uniform operation throughout the "state."

The distinguished counsel for the appellee was a member of the court, and dissented on the ground, the act upheld by the court was void, because it had extra territorial operation, and was not within the p wer of the general assembly to pass, but in a lengthy opinion he nowhere dissents from the view of the court as to this 26th section of the constitution.

Again the provision was considered by the court in Ohio vs. The Judges, &c., 21 O. S. 1, where it was held that an act prescribing and limiting the fees of county officers in Hamilton county was not a general law: Again in The State vs. Covington, et al., 29 O. S. 102. The constitutionality of an act creating a special board of police for the city of Cincinnati was under consideration, and was held valid. The court says: (page 111) "Section 26 of article 2 does "not forbid local legislation. Its requirement is that laws

"of a *general nature* shall have a uniform operation "throughout the state. It does not require that all enact- "ments of the legislature shall be of a general nature. On "this point I will only add that the power of the general "assembly to pass local and special laws is embraced in "the general grant of legislative power subject of course to "such inhibitions and limitations as are found elsewhere in "the constitution. But section 26, article 2 was not in- "tended as a limitation on the power."

Again, in a very recent case, McGill vs. The State, 34 O. S. 343, this provision was considered. In this case the court reviews all its former decisions, and the decisions of other states which suffer under a like indefinite constitutional requirement, and arrives at substantially the view expressed by the court in Lehman vs. McBride in the 15th Ohio State above cited, and it concurs in the view taken by this tribunal of a similar clause as set forth in the 4th of Otto 155.

This provision of the constitution was intended to prevent the general assembly from giving to an act of a general nature a mere local operation.

From these cases it would seem to be settled, this provision was intended to prevent the general assembly from giving to an act general in its nature a mere local operation, and no act which applies alike to all persons, or property throughout the state, subject to its operation, falls within its prohibition.

SECTIONS 2 AND 3 OF ARTICLE 12 AND SECTION 4 OF ARTICLE 13.

How or in what manner the act of April 12th, 1877, contravenes these tax provisions of the constitution of the state, the appellant was not informed by the decision of the learned circuit judge who rendered the decree against him, nor by any argument of the distinguished counsel for the

appellee. It is difficult to discover the sequence between the act and the grievances stated in the bill. It is alleged the shares of the bank are not taxed by any law prescribing any uniform rate for their valuation, or for their taxation in common with all other property. If, by this, it is meant the act does not prescribe any rate for the taxation of bank shares, we readily concede it does not, nor was it intended to prescribe any. If it is meant to aver this act prescribes any rule for the valuation of the shares of banks different from that applied to the valuation of all other property, then the averment is not in accordance with truth. How the duties imposed by the act upon the state board of fixing valuation upon the shares of National Banks and changing those fixed by county boards of equalization without reference to any other property, and without any duty imposed or means afforded of equalizing the valuation of such shares with the valuation fixed upon other subjects of taxation, destroys the uniformity in regard to taxation required by the above provisions, the bill, the arguments, and the decision alike fail to disclose.

If it be meant by all this, it is not permitted by the constitution that a particular board should act as a valuing or equalizing board as to one class of property only, then we reply, the act constituting a State board for equalizing the valuation of all the land of the State is subject to the same objection. But it is not true the board here complained of, has no other subjects of taxation to pass upon, for it has, for many years, been the final board for equalizing the valuations of all the railroad property in the state.

It is alleged this board acts without notice and without complaint. The act requires the returns of all the banks to be transmitted to the board, and fixes the time of their meeting, and this, we submit, is sufficient notice to all parties. The averment that this State board arbitrarily increased the valuation of the banks in Cuyahoga county, is denied, and is unsupported by proof. If it be meant to aver, this board

has any arbitrary power in the matter of valuation, a simple examination of the law shows the statement to be incorrect. The act imposes the duty, on the board, of equalizing the valuation placed by the different county boards on the shares of the several banks and banking associations located in their respective counties, but it gives the board no arbitrary power, they cannot increase or decrease the aggregate valuation of all the banks and banking associations in the state, as returned by the county boards to exceed $100,000, and, from the fact, they increased the valuation of the shares in this bank two and one-half times the total limit, it is apparent there must have been great inequalities in the valuation by the different county boards, and good grounds for complaint existed, even if there was none as alleged in the bill.

The power given by the act to this State board to equalize the valuation does not depend on complaints being made by any banks or, otherwise. The act authorized them to hear complaints. Any bank which believes itself overvalued by the county board, may make complaints. But the act directs the board to equalize the values as fixed by the county boards, whether complaint be made or not. They may make no changes. They may adopt the valuations of the county boards, but it is only on the valuations as determined by the State board, the county auditor is authorized to place the shares upon the duplicate for taxation.

The 2nd section of article 12 of the constitution requires laws to be passed taxing by a uniform rule (subject to the exemptions named) all moneys, credits, investments in stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money. The 3d section has no application to the matter in issue. It is a special provision as to banks and bankers. Inasmuch as the shares of banks are to be taxed only under the act of Congress, this section needs no comment.

The 4th section of article 13 is only a repetition of the 2nd section of article 12. It simply provides for corporations being taxed equally with individuals. The object of these provisions is manifest on their face. It was intended to provide all property should be taxed equally, and for the purpose of taxation, there should be but one standard of value. This view has always been taken by the courts of the state, and has always been acted upon by the general assembly. There is nothiug in these provisions requiring different kinds of property to be valued for taxation by the same agency. It was the establishment of a standard of value, and the command to the general assembly to tax every species of property, which the framers of the constitution had in view, and which the legislature has endeavored to obey. If there were any thing in the act of 1877 requiring the auditor of state, treasurer of state, and the attorney-general to depart from the standard of value prescribed alike to officials, citizens and corporations, there might be just grounds of complaint.

It is a most significant fact in this case that in complainant's bill, from caption to signature, of counsel, there is no intimation or suggestion of the shares of this bank being valued or taxed above their true value in money. It is not intimated or alleged, in their valuation, there was a departure from the standard enjoined by these provisions. It is not claimed or pretended, the act authorized or permitted the State board to depart or vary from this standard of valuation. Why should the appellee be willing to be taxed at the valuation of the county board? What sanctity is there attached to this peculiar body, which, as we have shown, has no duty to perform in regard to the valuation of the moneyed capital or other property of the individual citizens who are taxed in the same city with the appellee? Why should their brows be crowned with laurel? unless, as the testimony discloses, they had no knowledge of the value of the shares in this bank, and made no effort to acquire any.

The limitation imposed upon the general assembly by the 2nd section of article 12, according to the commonly received construction, is bad enough. It stands as a bar to the adoption of any of the means, which economic experience furnishes for reaching intangible property and hidden wealth. It compels the state to rely on the conscience of the citizen, quickened only by iron-clad oaths. As a necessary consequence the honest suffer, and the unscrupulous escape. If to this open door there be added a wholesale destruction of all the guards for the true valuation of intangible, and exceptional kinds of property, then are the good people of Ohio, indeed, unfortunate. If the legislature is compelled to require lands and goods, farming utensils and bank shares, household furniture and railroads, property tangible and intangible, to be valued by the same officials, it is shorn of all substantial power in the premises, and the whole elaborate system built up and perfected by the experience of nearly thirty years is rubbish upon the statute book. Certainly no such "*idea*" was intended by the framers of the constitution of 1851, or by the people of Ohio who adopted it. The method of arriving at the valuation of different kinds of property by different boards was a part of the original act of 1852, and has been incorporated into every subsequent act from that date to the present.

Numerous provisions of these various acts have been before the Supreme Court, and from first to last it was never intimated by counsel, or suggested by the court that the system of different boards rendered any assessment of tax invalid, *vide*.

1	Ohio	State	432.	15	Ohio	State	482.
1	"	"	622.	16	"	"	39.
3	"	"	1.	18	"	"	534.
3	"	"	66.	20	"	"	238.
6	"	"	45.	21	"	"	555.
7	"	"	42.	21	"	"	605.
10	"	"	431.	23	"	"	145.
13	"	"	201.	25	"	"	143.

The State ex rel. vs Holmes et al 20 O.S. 474. This can recognize the power of the State to make special boards of Equalization for cities distinct from the boards of Equalization for Counties.

The suggestion in the third statement, above cited from the complainant's bill, because this State board does not pass upon the final valuation of all other subjects of taxation, its action in equalizing the valuation of bank shares is illegal, is merely an attack on the policy of the act. The vindication of this act is, perhaps, out of place in this discussion, but it is quite certain many banking associations in the state, namely, those whose valuations were decreased by the increase in the valuations of the Cleveland banks, take quite a different view of the matter, from that taken by the appellee.

As above observed, the total increase by the State board is limited to $100,000, and the object and policy of the act was the benefit and protection of all the banks, and in carrying out the provisions of the constitution, not to permit the banks to be taxed beyond the limit prescribed by the National Banking Act. It might well happen, on the one hand, by reason of mere local or political prejudice the county board would put upon bank shares an excessive valuation, or on the other, through ignorance or favoritism a very low valuation might be arrived at. To provide against these irregularities the general assembly wisely provided an intelligent, able and disinterested board, consisting of the most important executive officers of the state, who, with all the returns of all the banks and banking associations before them, were to make a fair and just equalization of the valuation thereof. In so doing, the legislature of 1877 only followed the policy which has been pursued ever since the adoption of the constitution of 1851, and the establishment of special boards of equalization for particular kinds of property, as we have above seen, was never before questioned.

It is submitted the complete acquiescence of the judicial department, and the entire people of the state, in a legislative policy for more than a quarter of a century is entitled to great weight and very careful consideration, and it would

be a departure from the well settled rule of this tribunal to hold an act which is perfectly consonant with that policy to contravene the constitution, even if the act was apparently repugnant thereto, which confessedly this act is not.

THE TOLEDO BANK.

This review of the legislation of Ohio and of the decisions of its Supreme Court, it is submitted, demonstrates the error of the Circuit Court in rendering the decision against the appellant in the Toledo case, and would apply equally to this Cleveland case, if the testimony furnished any support for the 2nd statement of the bill. If any aliquot part of the tax assessed against the shares of this bank was shown to be in excess of the tax levied on the moneyed capital of the citizens of the city of Toledo, we do not contend such excess would not fall within the restriction imposed by the National Bank act. It would follow also, if in the valuation of the property of the individual citizens,a rule was prescribed different from that for valuing the shares of the bank, whereby the former was assessed at a lower valuation than the latter, such discrimination would equally contravene the same restriction. If the county auditor, in violation of his oath of office, had scaled the valuations made by the individual citizens on their returns of property, and put the same on the duplicate at a less valuation than that at which the same was returned, such a proceeding might also call for the intervention of the courts to protect the banks. If the decennial State board in their valuation of real estate had officially adopted a standard of value, different from that prescribed by law, and assessed it at some valuation below its true value in money, any tax on other property at its true value would be in contravention of the constitution of the state.

Concede all that can be claimed from the testimony produced in the case, and it falls far short of maintaining any of the grounds which would render the assessment on the

shares in any part invalid. If the act of 1876 is not unconstitutional and void, so as to render the action of the State board an absolute nullity, no ground exists for enjoining any portion of the tax. Grant, there was malfeasance and misfeasance on the part of the local assessors in the County of Lucas, that they returned new structures, and the property of such citizens as were delinquent at less than their true value in money, such a violation of duty in no way affects the general levy. Admit, some members of the State Board are of the opinion that in the decennial valuation, the land in Lucas County was not valued at its true value in money, such an opinion in no way tends to prove an incorrect standard was adopted in making the valuation. If certain witnesses are of the opinion, that land in Lucas County is not taxed at its true value in money, such an opinion can furnish no basis for either correcting the valuation, or for marking any definite line between the actual value and the assessed value. The proof falls far short of showing that in making their returns of personal property, the whole body, or any portion of the citizens of Lucas County committed perjury. There is no pretense, the decennial State Board did not endeavor in their valuation to place the true value upon the land in Lucas County, or that the returns made by the individual citizens were placed on the duplicate at any less than their true value. If the auditor winked at false returns, or abetted the assessors in making false returns as to new structures or delinquent property, it does not fall within the province of a Court of Equity to correct such a violation of official duty. The utmost that can be claimed for the proof is, that some property in the county of Lucas is not placed on the duplicate at the value required by the constitution and laws of the State of Ohio. Such omissions have been held in Ohio not to render a tax levied regularly on property at its true value in money obnoxious to the constitutional requirement of article 12, and to furnish no ground for interference by a Court of Equity to restrain the collection of such taxes.

EXCHANGE BANK *vs.* HIMES, 3 O. S. 1.

This case arose under the original act of 1852. By the 10th section, individuals and corporations other than banks and bankers were permitted in their return to deduct their actual debts from their moneys and credits. The Exchange Bank, which was by the act excepted from the permission to deduct its debts from its credits, brought its bill to restrain the collection of the tax assessed upon it. The court held the 10th section unconstitutional, and the deduction allowed to individuals unauthorized, but refused the relief prayed for by the bank. Judge Thurman, in his forcible and exhaustive manner, thus states the doctrine, page 49: "The complaint is that some persons have escaped their "proper proportion of taxation by which means the com- "plainant is taxed too much. If this is true, as to the "complainant, it is equally so as to every corporation "and individual in whose favor no deduction has been "made. If the tax assessed is wholly unconstitutional and "void as to the complainant, it is equally so as to an im- "mense number of the taxpayers of the state. The ques- "tion is, therefore, one whose magnitude can hardly be "exaggerated, and it demands all the consideration that it "has received. The taxpayer ought not to be required to "contribute more than the constitution exacts, and if he is "so required, he ought not to be remediless. On the other "hand, the demand of too much should not exonerate him "from the payment of his proper share; and if a court of "equity could give relief, it would seem but equitable to "make him, in the first instance, pay the proper amount."

"But what means have we of ascertaining the proper "amount? None whatever; nor is it at all probable that "any evidence could be furnished that would enable us to "even approximate it. For as the rate of state taxation is

shares in any part invalid. If the act of 1876 is not unconstitutional and void, so as to render the action of the State board an absolute nullity, no ground exists for enjoining any portion of the tax. Grant, there was malfeasance and misfeasance on the part of the local assessors in the County of Lucas, that they returned new structures, and the property of such citizens as were delinquent at less than their true value in money, such a violation of duty in no way affects the general levy. Admit, some members of the State Board are of the opinion that in the decennial valuation, the land in Lucas County was not valued at its true value in money, such an opinion in no way tends to prove an incorrect standard was adopted in making the valuation. If certain witnesses are of the opinion, that land in Lucas County is not taxed at its true value in money, such an opinion can furnish no basis for either correcting the valuation, or for marking any definite line between the actual value and the assessed value. The proof falls far short of showing that in making their returns of personal property, the whole body, or any portion of the citizens of Lucas County committed perjury. There is no pretense, the decennial State Board did not endeavor in their valuation to place the true value upon the land in Lucas County, or that the returns made by the individual citizens were placed on the duplicate at any less than their true value. If the auditor winked at false returns, or abetted the assessors in making false returns as to new structures or delinquent property, it does not fall within the province of a Court of Equity to correct such a violation of official duty. The utmost that can be claimed for the proof is, that some property in the county of Lucas is not placed on the duplicate at the value required by the constitution and laws of the State of Ohio. Such omissions have been held in Ohio not to render a tax levied regularly on property at its true value in money obnoxious to the constitutional requirement of article 12, and to furnish no ground for interference by a Court of Equity to restrain the collection of such taxes.

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"But what means have we of ascertaining the proper "amount? None whatever; nor is it at all probable that "any evidence could be furnished that would enable us to "even approximate it. For as the rate of state taxation is

"fixed with reference to the grand aggregate of all the tax-
"able property returned in the state, it is obvious that, in
"order to ascertain the excess of the state tax demanded of
"the complainant, we would have first to know the amount
"of all the property in the whole state that had improperly
"escaped taxation. And in regard to the county, township,
"and city taxes, we would have, in like manner, to learn
"what had escaped in their respective boundaries."

"This looks like an impossibility. If so, does it follow
"that, as the bad cannot be separated from the good, the
"whole tax must fall? If we so hold, we must be prepared
"to say that whenever an assessor, either wilfully or inno-
"cently omits to get a list of all the taxable property within
"his jurisdiction no taxes can be collected at all; for by
"such omission those whose property is listed are taxed
"more than if the ommission had not occurred.

"Let us suppose, for instance, that by some accident no
"list was taken of the city of Cincinnati, or that the list
"was lost or destroyed before the Assembly had fixed the
"levy for State purposes. It is evident that the grand ag-
"gregate of the State would be greatly diminished, quite as
"much so as it has been under the 10th section complained
"of. But would it follow that no tax for State purposes
"could be levied anywhere in the State? Could every tax
"payer out of Cincinnati obtain an injunction because the
"want of the Cincinnati list had increased the rate of taxa-
"tion upon his property? I cannot so hold, for to do so
"would, in my judgment, render it impossible ever to col-
"lect any taxes in the State. It may safely be affirmed
"that there never has been a year since the State existed
"that a large amount of property subject to taxation has not
"escaped, and thereby the listed property been bur-
"dened too much. This takes place every year in every
"township, city and town, and will forever take place.
"What remedy can a court of equity apply? I see none
"at all."

The Court undoubtedly erred in this case, in holding the 10th section void, but the doctrine, that omissions of property from the tax list does not render invalid a tax regularly levied, is well settled. It is to be borne in mind that as in the Cleveland case, so the Toledo Bank nowhere claims its shares were taxed beyond their true value in money. The case falls precisely within the doctrine established by this Court in the Railroad Tax Cases, in the 2nd of Otto. It follows also that the cases cited from Wisconsin and Illinois have no application to an assessment under the legislation of Ohio. In the Wisconsin case, under their legislation, the Court held the neglect and malfeasance of the official rendered the whole assessment void. In the Illinois case, the Court acting as a valuing board applied one rule of value to one class of property and another to a different kind. Here there was a clear, distinct violation of the rule of uniformity which could be corrected.

Upon these considerations we respectfully ask the decree of the Circuit Court be reversed.

GRANNIS & GRISWOLD.
Solicitors for Appellant.

Supreme Court of the United States.

FREDERICK W. PELTON,
Treasurer of Cuyahoga County, Ohio,
Appellant,

vs.

THE COMMERCIAL NATIONAL BANK,
Of Cleveland, Ohio,
Appellee.

No. 827.

REPLY TO ARGUMENT OF APPELLEE.

GRANNIS & GRISWOLD,
Solicitors for Appellants.

LEADER PRINTING COMPANY, CLEVELAND.

Supreme Court of the United States.

FREDERICK W. PELTON,
Treasurer of Cuyahoga County, Ohio,
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THE COMMERCIAL NATIONAL BANK,
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Appellee.

No. 827.

REPLY TO ARGUMENT OF APPELLEE.

GRANNIS & GRISWOLD,
Solicitors for Appellants.

In the argument of the counsel for the appellee, it seems to be conceded that the act of April 12th, 1877, does not fall within the prohibition of Sections 26 or 27 of the 2nd Article of the State Constitution; nor do we understand it to be claimed it contravenes the letter of the taxing provisions of that instrument. It seems also to be conceded, that the State may adopt one method for the valuation of real estate, and another for the valuation of personal property. It is, however, urged that the act operates to destroy the rule of uni-

formity intended to be imposed on the General Assembly in passing laws for the taxation of property. On page 18 of the printed argument, the proposition is put in this form: "That "every person owning property of the same kind, subject to "the same tax, and located wholly within the same taxing "district, is entitled to be treated in the same manner as "every other person with property in like situation and con- "dition, and that no two *modes or methods* for arriving at "the valuation, equalization or levy upon it are allowable."

In order to intelligently discuss a proposition, it is necessary to understand what its author intends by the language used. The phrase, "property of the same kind," must mean, if anything is intended to be understood as applicable to the issues of this case, personal property. Again, the phrase, "taxing district," as applied to taxation in Ohio, is a very ambiguous term. The total tax levied on these bank shares is made up by three distinct levies: first, that of the State, which by general law adopts a rate of levy on all the property within the State; second, that of the county, determined by the County Commissioners; and third, that of the city, determined by the City Council—the two latter being limited to a maximum by general law. These three rates of levy are, by the County Auditor, placed in gross on all property within the city of Cleveland. The tax is collected by the County Treasurer, and by him paid over to the State, county, and city, in proportion to their respective levies. Is the "taxing district," as affirmed in this proposition, the city, county or State? In view of the system, we think that, as used in the proposition of the counsel for the appellee, and as applied to this case, "taxing d strict" must mean the city of Cleveland, otherwise the proposition has no application to the case at bar.

The words "modes or methods" are indefinite terms. If it is intended by them to mean that in arriving at the valuation of property for taxation the State cannot use different rules or standards of value, then we have no contention with the appellee. We have never contended that one rule or standard of value could be applied to bank shares and another to other property. There is nothing in the legislation complained of which prescribes different rules or standards as applied to the case at bar. These words, then, must mean instrumentalities, agencies or boards. All that is contained in the statement as "to equalization" or "rate of levy," is outside of the issue joined between the parties, for the rate is uniform and equalization is but a step in arriving at valuation for taxation. Stripped, then, of all ambiguity, the proposition of the appellee is, that, to observe the uniformity in taxation demanded by the constitution, the State of Ohio is compelled, in the valuation of the shares of this bank, to employ precisely the same agencies it uses for the valuation of the personal property of all the citizens of the city of Cleveland. This proposition we deny and insist that it needs to be demonstrated. No only so, but we contend it has no countenance from any decision of the Supreme Court of Ohio, and it is contrary to the long-established policy of the State and has no foundation in reason.

The learned counsel in the introductory part of his argument quotes largely from two decisions of the Supreme Court of Ohio. If he means it to be inferred that either of these decisions sustains his proposition, then the inference is entirely unwarranted. No question of the kind was before the Court in either of these cases.

In the case of *Zanesville* vs. *Auditor*, 5 O. S. 580, the question was, whether or not certain lands within the corporate limits

of the city of Zanesville were subject to be taxed for general municipal purposes, or only for road purposes. It is true the eloquent gentleman, in delivering the opinion, took occasion to enlarge upon the objects and purposes of the taxing article in the Constitution; but these enlargements were not particularly pertinent to the case before the Court, and there is nothing in the syllabus or case to indicate that the Court had any opinion on the question here at issue.

The other case, *Bank* vs. *Hines*, 3 O. S. 1, has been largely quoted from in our original argument. It is true that the Chief Justice in his opinion (several of the Judges giving separate opinions) uses the following words:

"Taxing by a uniform rule requires uniformity not only in "the rate of taxation, but also uniformity in the mode of the "assessment upon the taxable valuation. Uniformity in tax- "ing implies equality in the burden of taxation; and this "equality of burden cannot exist without uniformity in the "mode of assesment, as well as in the rate of taxation. But "this is not all. The uniformity must be co-extensive with "the territory to which it applies. If a State tax, it must be "uniform over all the State; if a county, town, or city tax, it "must be uniform throughout the extent of the territory to "which it is applicable. But the uniformity in the rule re- "quired by the Constitution does not stop here. It must be "extended to all property subject to taxation, so that all "property may be taxed alike, equally—which is taxing by a "uniform rule."

It is abundantly clear that in this reasoning the Chief Justice could not have had in his mind the employment of agencies to make the valuation upon property to be taxed. There was no question of this kind in the case: but the question in

the case was whether or not certain persons were entitled to deduct their debts from their credits, and the Judge was seeking to show that all property must be valued and put upon the duplicate.

By the 10th section of the act of 1852, the Legislature had authorized individuals to deduct their debts from their credits in making their returns; but banks and bankers were excepted from the operation of this section. The Exchange Bank, being so excepted, and taxed on all its credits without deduction, brought its action to enjoin the tax, on the ground that the exception violated the equal taxation enjoined by the Constitution. The Chief Justice and the majority of the Court held the section unconstitutional, and denied the relief prayed for. The distinguished counsel for the appellee was a member of the Court, and concurred in the judgment, but differed from his brethren as to the constitutionality of the 10th section. According to his view, this so precious instrument, framed to provide equality in the burden of taxation, authorized and permitted one class of persons in the same taxing district to be valued and taxed at one valuation, and another class at a different valuation.

The majority of the Court, however, held that this equality required all property, including credits, to be taxed without deduction on account of debts. No question as to the agencies or instrumentalities to be employed by the State in arriving at the valuation of property was considered or even mentioned in either of the opinions of the two concurring judges or in that of the dissenting member of the court.

But that the dissenting judge did not then think a different method of valuation in any wise affected a tax, is apparent if we consider the very next case in the same volume decided

by the Court at the same term, viz: *Ellis & Morton* vs. *Linck, et al*, 3, O. S., 66. From that case it appears that Ellis and Morton were citizens of the city of Cincinnati engaged as a partnership in the business of private banking. They had no special privileges and were doing what any citizen of Cincinnati might lawfully do. As such citizens, they, like all others, were required by law to make out a full list of their personal property, and to place on it its true value in money. This they did and delivered the list to the assessor of their ward to be handed over to the County Auditor. They, however, deducted from their credits, their debts, all of which were due on demand. Their assets so made up they valued at $93,300. It was agreed that this was a true and correct statement and a just valuation. The auditor disregarded their return and added the average yearly amount of their credits without deduction and thereby increased their valuation in the sum of $880,000. These citizens appealed to the Court and insisted that the taxation on them was in violation of the equality of taxation required by the constitution. The majority of the Court under their previous ruling that the deductions allowed by the statute were without authority held that these plaintiffs were not entitled to relief. The dissenting judge concurred in the judgment but dissented from the proposition that individuals were not entitled to deduct their debts from their credits. As a judge, he could hold that because a person was engaged in money-lending he might be taxed ten times more than his neighbor, who only occasionally loaned money, and that this was equality under the constitution; but now, as counsel, he insists that a mere difference in the instrumentality employed in arriving at a valuation is a destruction of that famous instrument. He then failed to see that "property of the same kind subject to

the same tax, and located wholly within the same taxing district was entitled to be treated in the same manner."

By his then light, the individual citizen of Cincinnati could deduct his debts from his credits, although the debts were for money borrowed, and the credit for money loaned; but if he made a business of borrowing and loaning money, he was deprived of this privilege. Such a construction did the distinguished counsel place upon a Constitution which he has vaunted without stint as the perfection of human wisdom in securing equality of taxation, and evidently different methods of valuation of the same kinds of property in the same taxing district did not then disturb his judicial mind.

But for the limitation on the power of the States, in the National Bank Act, what would have been the valuation of this bank under this Constitution, of which the gentleman was one of the chief framers, and has been its great expounder?

These two decisions furnish the exact amount. It was to be taxed on all its assets, without deduction of its circulating notes and other debts.

It is true, the Constitution of the United States would have saved from the tax-gatherer its United States Bonds and Greenbacks, and we will presume there would have been obedience given to the supreme law of the land. From the return of this bank, excluding bonds, greenbacks, and its real estate, its property would have been placed on the duplicate at $2,409,726.32. The learned gentleman, in his opinion in these cases, has shown that such a valuation was perfect equality and justice, and in no wise destroyed the uniformity of the Constitution. He might urge that we have given the

face value of the notes and bills held for loans discounted. This was done by that Court in the case of *Ellis & Morton.*

But deduct from their face value all the deduction made by this County Board, and we then have the sum of $1,879,-226.30, an increase over the present valuation of more than the total sum added by the State Board to all the Cleveland Banks, and less than the amount which the gentleman himself added to the honest and true return of *Ellis & Morton.*

It is true, the ruling of the majority of the Court as to the 10th Section of said act was upheld by the same Court in a case in the 6th Ohio State; but neither in that case, nor in the previous ones, was the question of the power of the State to employ different instrumentalities in arriving at the valuation of different kinds of personal property even considered or mentioned. As a commentary on decisions controlled by political bias, these cases furnish ample instruction. The General Assembly paid no heed to these decisions. It did not repeal the 10th section, and in 1859, when the tax act was remodeled, the substance of the 10th section was retained, and from that day to this, in all valuations of personal property, individuals and banks and bankers have been permitted to deduct their *bona fide* debts from their credits. The people, with their usual good sense, have quietly ignored the extreme hardship of the doctrine of the majority, and the enormous iniquity of that of the minority of the Court, saying, "A plague o' both your houses."

Again, the proposition proves too much. As we have shown, these bank shares are taxed at the same rate as is the property, real and personal, of the individual citizen of the city of Cleveland; therefore, if the proposition is correct and the valuation of these shares is to be determined the same as that

of the personal property of the individual citizen, then the whole tax is illegally assessed. If it had happened that the valuation as determined by this County Board had been at some percentage above par as the bank's return fully justified, and there had been no State Board to correct their high valuation, upon this assumed premise, what an irrefragible argument the learned counsel would present. He would show that the individual citizen in this "taxing district" was permitted to place on his personal property his own valuation, but that this was denied to the bank. In the matter of equalization, the individual citizen would have the benefit of the judgment of six enlightened, intelligent business men of the city, while this poor bank would be turned over to the tender mercies of a board elected by the county at large—a board composed of officials dependent for their re-election upon the suffrages of rural voters, who have unjust prejudices against banks, who believe them to be mines of wealth, who, in their simplicity, believe that, when a bank officer swears his bank has a surplus, that means an addition to their actual capital stock. He would insist that this board must have catered to the prejudices of their constituency, and the bank thus subjected to a different "method" of valuation and equalization from that of individual citizens, and justly claim protection against these spoilers.

To sustain his proposition, on page 23, the Counsel states that the increase in valuation by the State Board "is just so much in excess of the burden on other property of equal value," and with a becoming modesty he submits: "this fact is established beyond a rational dispute." With all deference, we beg leave to say no such "fact" exists, and there is nothing in the record or elsewhere to establish it. He states that the evidence in this case establishes that the valuation put on

these shares by the County Board was higher in proportion than that affixed to other personal property, including the capital of private banks. We had occasion, in our original argument, to comment on this evidence. Let it be borne in mind that the witness had nothing whatever to do with the individual return made by the citizen. All private bankers made their returns under oath, the same as any other citizen, at their true value in money. If, as Auditor, he was cognizant of any false return he had full power to call the citizen to account and examine him. These returns were subject to the revision of an Equalizing Board appointed by the city of which the witness was a member. This board had full authority to add to the valuation placed on his property by any individual citizen if they believed it was not correctly returned. They did, in fact, add to the return of a private banker, $30,000. The witness admits that neither he, nor his board, made any inquiry to ascertain the value of the assets of the bank as specified in their return to him. Without any knowledge of the value of the bonds held by the bank, or of its securities, he says, in answer to the question propounded, "I was of the *impression at the time, and I am now*," that the valuation our board placed on these shares "were a little higher in proportion" than the valuation placed on other personal property, including private banking capital.

If such testimony establishes a "fact" beyond rational dispute, what ratio shall be placed upon direct proof, based on knowledge and intelligence. This witness does not state that a single individual citizen of the city of Cleveland returned his property at less than its true value. He does not show that he possessed sufficient knowledge to form a belief, nor does he ever rise to the dignity of a belief, but only gives an impression.

The next statement of counsel under this head is still further from the fact, if possible, than his conclusion upon the evidence. He states that, that which determines conclusively the increase in the valuation of the shares in this bank to be in excess of the burden imposed on other property is, "that the tribunal constituted by law, with full authority, to fix the valuation of our shares and equalize such valuation with that put upon all the other personal property, has decided it." We have shown that this County Board has nothing to do with the valuation of the personal property within the city of Cleveland, which, in fact, is more than seventy-five per cent. of all the personal property within the county. This board can equalize the valuation of real and personal property within the county, except that which is included within the city of Cleveland. What is there conclusive in their valuation? The act requires the Auditor to make a valuation, and also requires this County Board to make a valuation. Why is the one to be preferred to the other? The direction to this officer, as well as to the County Board, is to take the returns of all the banks and, with full authority, to determine their true value in money. What is there in the act to make the action of the County Board final and conclusive? They are but fallible men, and may err in judgment. It is asserted, with some assurance, that we have not assailed this valuation of the County Board. We fail to see the pertinency of the statement. If the County Board is such a final tribunal, why in the valuation of real estate is not their judgment to be equally conclusive? In the grand valuation of the real property of the State, the valuations returned by the District Assessors are passed upon by the County Boards (always excepting the cities); and the direction to these boards also is to fix the value of the property at its true value in money. Yet the State requires their

valuations to be sent to a State Board by which they are again considered and finally determined.

There is no distinction in the Constitution betwen real and personal property, and if the State can require the County valuation of real estate to be considered by a State Board, why may it not require the same thing as to any particular kind of personal property? The State requires a special board to meet and fix the value of railroad property and their valuations can be revised by the same State Board that finally fixes the valuation of bank shares.

The counsel for the appellee then proceeds to entirely misstate the answer which the appellant makes to his objection, and insists that we reply "you are not taxed beyond your real value." We have made no such answer but simply suggested that in your bill you made no such complaint. Our answer to your objection *is*, that in the valuation which the State Board placed on your shares, there was no departure from the rule of valuation established by the Constitution, but upon this board, and upon all boards the law prescribes one rule, and only one rule of valuation. We say that you have nowhere shown that there has been any departure from this uniform standard of valuation. There is nothing in the law which permits it, and there is nothing in the required action of the State Board that raises the slightest presumption that they have departed from the prescribed standard. The object of establishing all these various boards is an honest and earnest attempt on the part of the State to arrive at a true valuation according to the rule laid down by the Constitution.

It is conceded by the counsel of the appellee that the act of 1877 does not contravene any letter of the State Constitution, but the claim is that it imposes on these bank shares a

higher valuation than is placed on other property in the city of Cleveland. We say that nothing of this kind is apparent on the face of the act; and it nowhere appears that the State Board, in raising the valuations of the Cleveland banks, and lowering those of banks in other localities, applied a different rule of valuation to these different banks. There is nothing to show that the State Board did not honestly endeavor to arrive at the true valuation of all bank shares, in accordance with the rule of valuation prescribed by the Constitution. It was their sworn duty to observe this rule, and the presumption is that they did so. All there is in the case is, that the State Board differed from the County Boards in the application of the same rule.

It was as competent for the legislature to authorize both boards to act on the matter, as to authorize one, and as competent to put the State Board over the County Board, as to put the latter over the Auditor. It was as competent for the legislature to put this State Board over the County Boards, in the matter of bank shares, as to put another State Board over the County Boards in the matter of real estate. If one was the proper subject of legislation, why not the other? We called on the appellee to point out the difference; and failing to do so, we insist that, as the Courts of the State from the beginning have upheld the one, so, as a matter of course, they would uphold the other if opportunity should arise.

Again falling into mistatement, the counsel of the appellor proceeds to say, page 34: "As a matter of fact, "however, as is well known to residents of the State, the "public officers and boards charged with the duty of assess- "ing property for taxation, have been in the habit, for "more than a quarter of a century, of placing a much "lower value upon it than owners generally would con-

on their returns. There was to be no comparison of one species of property with another, but every species was alike to be valued according to its true value in money, and both citizen and board were to perform their duty according to their best intelligence; and if they failed in any or every case to get at the true value of the property it was not the fault of the law, but because the law must be executed by fallible men and not by divine intelligence. The counsel admits there must be inequalities under any system because of the fallibility of human nature, but reasserts that the legislature of Ohio has absolved its officials from making an honest effort to carry out the law. This attack on the General Assembly is unwarranted by any fact whatever. The further assertion, that the County Board, in this case, on "examina-"tion and comparison of the value of these bank shares with "the value of other property within the county, placed a "valuation thereon in proportion to that of the other property "in the county," is not sustained by any fact appearing in the record, nor by any law authorizing this board to perform this duty of equalizing and valuing these bank shares. The law requires the different banks to make a return of their resources and liabilities to the County Auditor, and on their return he is required to make a valuation of the shares. All these returns, with his valuation thereon, are handed over to the County Board, who are required to equalize and value the shares of all the banks. It is a special duty imposed on this board unconnected with their general duties. Neither the Auditor nor this board are authorized, in arriving at their valuations, to do so by a comparison with the valuations placed on their personal property by the individual citizens of the city of Cleveland, or of the valuations placed on their real property. As we have shown, this County Board had no duty whatever to perform in regard to the valuation of the real or personal

property of the individual citizens of the city of Cleveland. It is supposed that such a board would exercise a somewhat intelligent judgment, but the standard of value by which they were to be governed and the aim to be accomplished in their work was to arrive at the true value in money of these shares. To assume or claim, this County Board, in the performance of their duty, placed on these shares the same proportion of value that was placed on the real and personal property of the citizens of Cleveland is on a par with the numberless incorrect and unwarranted statements with which the argument of the counsel of the appellee is replete. If assertion and assumption are to take the place of the Record, we yield the palm to the distinguished gentleman. We confess our inability to measure swords with him in such a contest.

The counsel next proceeds to attack the State Board as an excresence on the system of taxation established by the legislature of the State. It is assumed that, because this board has no power to equalize the valuation of other personal property, it has no means of knowing whether the true cash value of these shares would leave them in harmony with the valuation placed on other property. But the counsel forgets to add that the State Board has the same means as the County Board of knowing what value are placed on the real and personal property of the citizens of Cleveland. The State Auditor, who is a member of the State Board, has returned to him all the valuations of the city and county. The County Board could by inquiry, no doubt, compare the assets of the banks with those returned by individual citizens, but there is nothing in the law which requires them so to do and the State Board could do the same thing.

That, as between tax payers, the relative values as fixed by the county and city boards is final and conclusive is so, simply

because the legislature has chosen so to leave it. But these city and county boards may at any time increase the valuation of any piece of real estate to its true value in money. They may also reduce the valuation of any parcel but may not reduce the general aggregate below that fixed by the State Board.

After saying that the State Board deals with one class of property only, the counsel proceeds to add that, after the County Board has settled the value of this class of property and equalized it with all other personal property and laid the foundation for an equal proportionate burden, this distant board without any knowledge, &c. Here again is the assumption that this County Board arrived at its valuation by a comparison with the valuation placed on the real and personal property in the city of Cleveland or other city in which a bank may be located. We have, it is submitted, abundantly demonstrated that this assumption is entirely unwarranted and has no foundation either in fact or law. The further argument under this head based on this false assumption does not in our judgment call for a reply.

It is said that the Legislature might as well provide a board for equalizing the value of horses in the State, as bank shares. We see no constitutional difficulty in a law of this kind or any objection to it, save its inconvenience. Horses are not permitted to be valued in comparison with horned cattle; but the owner of each horse and ox is required to list the same and value the same under oath at their respective values in money. By no law is there any comparison to be made between different kinds of live stock, or other tangible property. The Legislature has been content to leave this matter to the intelligence and conscience of the citizen, subject to the final revision of local boards, who could, if need be, make the necessary

corrections by personal inspection. But property in bank shares is intangible, and does not need for its valuation personal inspection. A State Board is as well qualified to judge of their value as any county or local board. The Auditor of State is at the head of the taxing system. To him all valuations of every kind of property from every locality are returned. He and his associates upon the board well understand what the National Bank Law requires of these associations in respect to the discount of paper; and it is fair to presume that the Legislature deemed them better judges of the value of bank shares than any local board, We insist that this whole matter as to who shall be the final judge of the value of any particular kind of property is purely a subject of legislative discretion. It is all a matter of convenience of administration to be determined by the Legislature; and so long as each and every board, in the various steps required to be taken, follows and obeys the rule prescribed by the Constitution, there can be no complaint that any of its provisions are disregarded.

Much stress seems to be laid upon the fact that this State Board is a *distant board*, holding its sessions at the Capitol of the State, instead of meeting in the City of Cleveland. The official residence of these State officers is the Capitol, but they are usually residents of different counties. They have before them the returns of the banks from all localities in the State, and the policy of the State in this matter of equalization. has always been to give due regard to the judgment of each of the agencies it employs. Only a slight consideration of the whole action of the Board is needed to arrive at a correct view of this Act. The record shows the total increase of all the Cleveland Banks was about $800,000. It follows, of course, that some other banks in different localities, were by this Board reduced in valuation at least $700,000. It is, as we have

shown, an entirely unwarranted assumption, to claim the high valuation in their counties by their respective County Boards was made upon a comparison with the values placed on other personal property therein for taxation. All these boards, with the best lights before them, were in duty bound to put on the shares of these banks a just and true valuation according to their value in money. Under the provisions of the National Bank Act, and the regulations of the Comptroller's office, there can be but little doubt as to the value of the shares of any properly conducted bank. Their chief capital is the bonds held by the government to secure their circulation. Except the securities held for their loans and discounts all their other assets are substantially cash items. The differences in value of the different shares in banks, depend upon the amount of the surplus which each bank has accumulated, and the value of the securities which it holds for its loans and discounts.

These facts all appear in the sworn statement laid before these respective Boards. The difference in the estimates of County Boards must arise, (supposing them to act honestly,) upon their judgment as to the value of the securties held for loans and discounts. If, from the return of any bank it appears that it has a large amount of overdue bills and loans, this is a matter which is also apparent, and can be taken into account in valuing these securities. As a general rule, the securities held by banks for loans and discounts, are of the same value in one locality as another, always excepting those held for overdue loans.

It was perfectly competent for the State Board, in any case, to examine the character of the loans and discounts of any bank, and the County Board, in the same manner, might do so. But there was no law to compel either the County Board

or State Board to enter upon any such personal examination and inquiry. The extent, to which such inquiry could or should be made, depends entirely upon the fidelity with which any such Board performed the duty imposed upon it by the act. The State Board, in their action, would undoubtedly have the right to presume that the County Board, acting in the particular locality, and having the means so to do, did inquire as to the value of the securities held by the respective banks, and as their returns showed but a small amount of loans over due, they also had the right to presume that these securities were of the ordinary character of bank securities. It was for the purpose of correcting the judgment of these County Boards upon the value of these securities, that this State Board was organized and established.

Abundant reason appears from the records why the State should have required the action of this Central Board upon a comparison of the returns so made by the banks throughout the State. As appears from the records, this Cuyahoga County Board, without any inquiry into the value of the securities held by this bank, arbitrarily fixed the valuation of their shares at a large percentage below their par value. The reduction from the capital and surplus of this bank was over a half a million; and, of course, as all other items in the resources were cash items, and bonds above par, the reduction must have been made upon the loans and securities; and without examination, they struck off over twenty-six per cent. from the face value of these securities. Without doubt, in many counties there was a much less deduction from the face of the securities held by their respective banks. The character of the general official duties of the officers composing this board rendered them better qualified to judge of the value of these securities than any local board, and the fact that they held

their sessions at Columbus could in no wise affect their judgment. With all the returns before them, this State Board was authorized to and did correct these disparities. If an additional burden has fallen upon the Cleveland banks, it has been lightened on others who could have appeared here with much better grace to complain of their County Board had the State not provided this means of justice to them all.

All that is said as to class legislation has no pertinency. The Legislature has not sought to discriminate against the banks, as a class, as was the purpose of the gentlemen and his associate framers, according to his view of the State Constitution. The property of the banks to be taxed is intangible in its character; and the General Assembly in this Act has only sought to have the command of the Constitution to tax them uniformly, honestly enforced.

Under the last head of his argument, the counsel attacks this act because it does not give to the State Board power enough. The object of the Legislature in establishing this Board was to equalize the value of the shares of all the National Banks within the State. It is true the act does not in terms direct that, in so doing, this Board shall have regard to the true valuation in money of such shares, but they were State officers, and were acting under official oath to support the Constitution of the State of Ohio, which had prescribed the standard of value for all taxation. Under this head, as in all the other parts of his argument, the whole superstructure is placed on the assumption, that in the valuation by the County Boards, the value of the bank shares are fixed in proportion or comparison to the value placed on other personalty within the county. With this assumption eliminated, the argument falls, and all that is said is but a mere complaint that this State Board increased the value of these shares of

the banks above the County Board. In fixing a maximum of either increase or reduction, the rule applied to the action of this State Board is similar to that governing the State Board for the equalization of real property. In all this proceeding, as we have observed, the State has had regard to the judgment of all its agencies in arriving at the values of property; it gives to them all one rule to be governed by, and by equalizing the results arrived at by this uniform rule, it seeks to accomplish, as far as can be done by human means, a just result. It is the same policy which it has pursued from the adoption of the Constitution, and, as we have shown, never before has an objection been made to the constitutionality of this policy. The act, as it stands, is confessed by the appellee to contravene, in terms, no provision of the Constitution; and the case, as it appears on the records, is that of a tax assessed upon property liable to taxation, assessed in the manner prescribed by law, and in the action of any of the agencies or means of arriving at the valuation and fixing the rate of levy, no step contrary to law has been taken, and by none of these agencies has any standard or rule of valuation been adopted different from that applied to all property within the State. For a Court of Equity to interfere in such a case to enjoin the tax, or any portion thereof, is to say to the General Assembly of the State of Ohio, "You can exercise no discretion, in the means which you may choose, to determine and arrive at the just valuation of property as required by the Constitution of the State."

GRANNIS & GRISWOLD,
Solicitors for Appellant.

IN THE SUPREME COURT

OF THE UNITED STATES.

FREDERICK W. PELTON,
Treasurer of Cuyahoga County, Appellant,

—VS.—

THE COMMERCIAL NATIONAL BANK
of Cleveland, Ohio.

NO. 827.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLEE.

By R. P. RANNEY, Counsel.

Law Reporter Print, Lyman Block, Cleveland, Ohio. [*November, 1879.*

IN THE SUPREME COURT

OF THE UNITED STATES.

FREDERICK W. PELTON, Treasurer of Cuyahoga County, Ohio, Appellant,

vs.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND, OHIO.

APPEAL FROM THE U. S. CIRCUIT COURT FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLEE.

THE CASE STATED.

The appellee, complainant below, is a National Banking Institution, located in the City of Cleveland, with a capital stock of one million two hundred and fifty thousand dollars, divided into shares of one hundred dollars each, owned in part by citizens of other states, but more largely by residents of this State. Upon these shares, for the

year 1877, a tax was levied for state, county and corporation purposes, amounting in the aggregate to $33,225.45, over four-fifths of which was imposed for the municipal taxes of the City of Cleveland. Of this aggregate amount, the Bill concedes that $26,097.50 is properly imposed, and as a consequence of this concession, a tender of that amount was made to the Treasurer, who refused to receive it, until the order of the Court, allowing the provisional injunction, permitted him to do so, without prejudice to his claim for the whole amount entered upon the duplicate. The amount in controversy, therefore, is the difference between these two aggregate sums, ($7,127.95) — the lesser sum being the regular percentage levied upon the valuations fixed upon the shares by the County Board of Equalization, and the larger upon the increased valuations returned from the State board, and entered upon the duplicate. All the taxes pretended to be due upon the valuations of the County board have been paid, and the injunction covers nothing but the excess; and the single question arising is: —was the large addition made by the State board legal and proper; or, as held by the Circuit Court, unauthorized and void?

As most of the questions to be considered will involve the validity, construction and legal effect of the Legislative Act of April 12, 1877, (74 O. L. 88) and the action of the State board under it. I here insert the Act entire:

vs. The Commercial National Bank of Cleveland, Ohio.

AN ACT to provide for the equalization of the valuation of bank shares for taxation, and to repeal an Act therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,*

That it shall be the duty of the cashier of each bank or banking association, located in this State, whether incorporated or organized under the laws of this State, or of the United States, to make out and return to the Auditor of the County, on or before the second Monday of May, annually, a report in duplicate, under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such report, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share.

SECTION 2. It shall be the duty of the Auditor of the county in which such bank is located, *to assess the value of the shares of such banks according to their true value in money*, from which deductions shall be made as required by the fifth section of the Act entitled "An act to provide for the taxation of bank shares and bankers," passed April 16, 1867, and immediately after he shall have so determined and assessed the value of the shares of such bank or banking association, to make out and transmit to the annual board of equalization of the county in which such bank is situated, a copy of the statement made and returned by the cashier of such bank or banking association, together with the valuation of such shares for taxation, as determined by such county Auditor.

SECTION 3. The board of equalization designated in

Section two, shall have power to hear complaints, and shall equalize the valuation of the shares of such bank or banking association, so fixed and determined by said county Auditor, *and with full authority to equalize said shares according to their true value in money.*

SECTION 4. When said board of equalization, designated in Section two of this Act, shall have equalized and determined the valuation of the shares of such bank or banking association, it shall be the duty of the Auditor of the county in which such bank or banking association is situated, to make out and transmit to the Auditor of State a copy of the statement made to him by the cashier of such bank or banking association, together with the valuation of the shares for taxation, as equalized and determined by the board of equalization designated in Section two of this Act.

SECTION 5. That the Auditor of State, Treasurer of State, and Attorney-General, shall constitute *a board of equalization of the shares of such banks or banking associations* of this State, as fixed and determined by the several county Auditors and county boards of equalization, for the purpose of taxation, under the provisions of said act; said board shall meet on the third Tuesday of June, at the office of the Auditor of State, in Columbus, and *shall have power to hear complaints and to equalize the valuation of the shares of such banks or banking associations*, as fixed and determined by the several county auditors or county boards of equalization under said Act; *not, however, increasing or decreasing the aggregate value* of the *amount* returned by the County Auditors or county boards of equalization, more than one *hundred thousand dollars.*

SECTION 6. The Auditor of State shall, forthwith, after such equalization shall have been made by said board, certify to the Auditor of the proper county, the valuation of the shares of such bank or banking association as equalized by said board, and said shares shall thereupon be charged with the taxes upon the duplicate at such valuation for said year.

SECTION 7. That the Act entitled "An Act to provide for the equalization of the valuation of bank shares for taxation," passed April 12, 1876 (O. L., vol. 73, p. 251) be and the same is hereby repealed.

SECTION 8. This Act shall take effect and be in force from and after its passage.

Passed, April 12, 1877.

ARGUMENT.

As I am informed that the case of *Cummings*, Treasurer, *vs. Merchants National Bank of Toledo* is set down for hearing with this, I am enabled to relieve the Court of much that it would be otherwise proper to say, by simply omitting to repeat what is better said by Gen. Swayne in his brief in that case, and also to omit the citation of many authorities referred to and fully examined by him. For while the cases are not the same, and arise out of taxes levied in different years, and under different statutes, they still have much in common, and I can see no reason for making

larger drafts upon patience than is necessary to bring the whole subject to the attention of the Court. I shall, therefore, confine myself to a comparatively brief statement of the reasons which bring me to the conclusion that the stockholders in the Bank I represent, have paid all the taxes that in justice or law they ought to pay; that the additional burden undertaken to be cast upon them by the State board is illegal and void; and consequently, that the decree of the Circuit Court is exactly what it should have been.

I suppose I may assume upon the mere statement, that the stockholders in these institutions are not tenants at will in the States where they are located; or, like foreign corporations, obliged to submit to such exactions as may be required for the privilege of doing business outside of the State that creates them.

These banks are Federal instrumentalities, expressly placed under the protection of the Federal Judiciary, and interests in them, which all are invited to take, could only be taxed by the States when allowed by Congress. True it is, Congress has very properly allowed the shares to be "included in the *valuation* of the *personal property* of the owner or holder of such shares," and thereon to assess taxes "not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," but so far as non-resident owners are con-

cerned, only "in the city or town where the bank is located" — Rev. St. § 5219.

As the Constitution of this State has, for the purposes of taxation, placed "moneyed capital" upon exactly the same footing as all other property, and as no tax can be levied upon any property except upon a *valuation* of it, I think all the considerations arising upon this Act of Congress, are necessarily involved in a proper construction of the State Constitution, and require no separate examination.

It is then, clear, beyond all controversy, that the shares in these banks are by express declaration (whether needed or not), *personal property*, the *situs* of which, for the purposes of taxation, is fixed, both by Congress and the State Legislature, in the city or town where the bank is located, without any regard to the domicil of the owner, and having no existence in any other place.

It would seem to follow, that the shares in this bank must be treated as all other personal property in the city of Cleveland, and that, while its owners must submit to pay their proper proportion of all taxes legally levied upon property there, they are entitled to the full protection of the State Constitution against every attempt to make them pay more, as well as every attempt to make them an exceptional class, either in the *mode* of levying the taxes, or in the extent of the burden imposed. That these attempts

are made, and that they are condemned alike by the letter and spirit of the Constitution, as interpreted by the Supreme Court of the State, I hope to make very manifest by an examination of some of the provisions of that instrument, and the Act under which this large additional burden purports to have been made.

CONSTITUTIONAL PROVISIONS.

It would be wholly irrelevant to any question here involved to stop to consider what may be the scope, subjects or purposes of taxation, where no constitutional restraints are imposed upon the law making power. Each State for itself determines whether this very necessary, and at the same time very dangerous and often oppressive power shall be left unlimited, or, to prevent oppression and abuse, regulated and restrained, and of the character and extent of such restraints. Where this is done, the assigned limits cannot be passed or disregarded, either by direct violations or, what is still more dangerous, *covert evasions*; and every such attempt, whether induced by good or bad motives, should meet the instant reprobation of the courts; or, indeed, in the language of C. J. MARSHALL: "Written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable."

Very early amongst the States imposing such restraints, the State of Ohio gave expression to her sense of justice and policy in constitutional provisions so direct, positive

and peremptory, as to leave very little excuse for misunderstanding the intentions of the people, or the objects and purposes intended to be accomplised.

They may be sumed up in this: *Property, of whatever kind, or by whomsoever owned, shall contribute to the general revenue in the exact proportion of its value in money, and no discriminations as between persons or different kinds of property, shall be allowed.*

These objects and purposes are accomplished by the following provisions, found in the *twelfth* Article of the Constitution: —

SECTION 2. "LAWS shall be passed, *taxing*, BY A UNIFORM RULE, ALL moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also *all* real and personal property, *according to its true value in money.*"

SECTION 3. "The General Assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description, (without deduction) of all banks now existing, or hereafter created, and of all bankers, *so that, all property employed in banking shall always bear a burden of taxation* EQUAL *to that imposed on the property of individuals.*"

To which should be added for completeness, the 4th Section of the 13th Article, relating to corporations, as follows:

SECTION 4. "The property of corporations, now existing or hereafter created, shall forever be subject to taxation *the* SAME *as the property of individuals.*"

Soon after the adoption of the Constitution, these provisions came under review in the Supreme Court of the State, upon questions directly involving their construction and legal effect, in the case of *Exchange Bank, of Columbus vs. Hines*, 3 O. St. R. 1.

Three Judges delivered opinions. Chief Justice BARTLEY, in delivering the opinion of the Court, after remarking that every species of property enumerated in the 2nd Section was subjected to the one principle of equal taxation according to value, and that it was "manifest from the context and spirit of these provisions, that it was the intention of the Constitution to provide an effectual barrier against a fruitful source of oppression and misrule, arising from inequalities in taxation, by putting an end to all legislative discretion as to *what* should be taxed, *what* should bear the heaviest burden of taxation, and *what* and *how much* should be exempted from taxation"—and proceeding to the very question I am now considering, he says:—

"What is meant by the words '*taxing by a uniform rule?*' And to what is the rule applied by the Constitution? No language in the Constitution, perhaps, is more important than this; and to accomplish the beneficial purposes

intended, it is essential that they should be truly interpreted, and correctly applied. '*Taxing*' is required to be '*by a uniform rule;*' that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity, not only in the *rate* of taxation, but also *uniformity in the mode of the assessment* upon the taxable valuation. Uniformity in taxing implies equality in the *burden* of taxation; and this equality of burden cannot exist without *uniformity in the mode of the assessment*, as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform over all the State; if a county, town, or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution, does not stop here. It must be extended to *all property* subject to taxation, so that *all* property may be taxed *alike, equally* — which is taxing by a uniform rule."

JUDGE THURMAN, in a very able concurring opinion, expresses the same views thus: —

"In regard to taxation, *equality* is the great idea of the Constitution. Inequality was the pre-existing evil. *Equality is the remedy.* Thus, Section 2d requires *all* property (I use the word here in its broad sense), burying grounds, certain property devoted to religious, charitable and public uses, and $200 of personal property excepted, to be taxed,

It is to be taxed *at its true value in money, and by a uniform rule. There is to be no false valuation*, no rule that exempts some property and casts the burden of government upon the rest; no different rates of taxation upon different kinds of property in the same locality. Such is Section 2d. *All is uniformity, all equality.* But lest this Section might be construed to relate to individuals alone, we have it declared in Section 3d of the same article, that 'all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals;' and, again, in Section 4th of Article 13th, that 'the property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.'"

The remaining Judge, although dissenting from the conclusion of the Court, that the section of the tax law allowing deduction of debts owing from those due to the taxpayer, was unconstitutional — yet, fully concurred in the views above stated, and specified "the great leading objects of Article twelve, in connection with other provisions relating to the same subject, apparent on its face," to be:—

First, to compel the Legislature, by laws stating distinctly the object, to provide for raising by taxation, each year, an amount of revenue sufficient to defray the expenses of the State, pay the interest on the State debt, and by Section seven, Article eight, not less than one hundred thousand dollars for the sinking fund."

"Secondly, to prohibit the levying any part of this sum upon persons by the poll; from which, with deference to others who have thought differently, I am unable to distinguish impositions upon professions and occupations."

"Third, to designate the *basis* of taxation to be *property — property alone*, and all the property of the State, with some few specified exemptions, to be allowed at the discretion of the General Assembly."

"Fourth, *to require the same burthen to be laid upon the same value*, whether it consists of lands, goods, money or choses in action, or in whatever way it may be used or employed. *This is taxing all values 'by a uniform rule.'*

* * * * * * * * * "Whatever goes upon the duplicate, let it be lands, goods, moneys, credits, or investments in bonds or stocks, goes there at its true value; and must, under all circumstances, be subjected to the same rate per cent. of taxation."

And the same Judge, two years later, in expressing the unanimous opinion of the Judges then composing the court, and upon the subject being again presented, said:—

"Before the adoption of the present Constitution, the whole matter of taxation was committed to the discretion of the General Assembly. It might be levied upon such property and in such proportion, as that body saw fit,

The right to make exceptions and exemptions, was unquestionable. *But this discretion no longer exists.* The public burdens are made to rest upon the property of the State, and whenever money is to be raised by taxation, the positive injunction is, that 'laws shall be passed, taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also *all* real and personal property, according to its true value in money.' *Without express authority of law*, no tax, either for State, county, township, or corporation purposes, can be levied; and we see no reason to doubt, that this Section of the Constitution is equally applicable to, and furnishes the governing principle for, all laws authorizing taxes to be levied for either purpose. The great object of the provision was to secure *equality and uniformity* in the imposition of these public burdens. The convention was very well aware that much the largest part would be required to answer the purposes of these local sub-divisions; and equally well, that it could only be levied as the General Assembly should provide. In establishing this *principle* of *justice* and *equality*, they have necessarily made it the *fundamental rule* upon which all such laws *must* be based; and its spirit and purpose can only be preserved by holding that it requires a uniform rate per cent. to be levied upon all property, according to its true value in money, within the limits of the local sub-division for which the revenue

is collected; subject only to the exemptions specially provided for in the Section."

City of Zanesville vs. Richards, 5 O. St. R., 592.

It may be proper to add that in the case of *Latimer vs. Bowman*, 6 O. St. R. 279, after an almost complete change of the Judges of the Court, the ruling in the case of *Exchange Bank vs. Hines* was unanimously affirmed, the Court saying: "We are fully satisfied with the correctness of the decision in the case of the *Exchange Bank vs. Hines*, and feel no disposition to disturb it."

It is only necessary further to state, that the doctrines and principles enunciated in these decisions, in their application to the *taxation of property* for *general revenue* purposes, have never since been doubted by any Court of the State, or, so far as I know, by any Judge of any Court; and they must be regarded as embodying the settled judicial construction of the constitutional provisions to which they relate, and upon which the decision of this cause depends.

Questions have arisen, upon which some difference of opinion was found to exist, as to whether these provisions required the entire revenue to be raised from the taxation of property, or might be supplemented by sums derived from licences and the like; and whether special assessments upon real property benefited, for the improvement of streets, etc., might still be imposed without reference to

valuations or uniformity of rates. These questions have been passed upon by the Supreme Court, but as they can have no possible relation to anything now under discussion, I pass them by.

This is a tax upon *property — personal property* — levied to raise *general revenue*, mostly for the city in which the bank is located, although the entire tax is imposed and collected by the authorities of Cuyahoga County, which constitutes one of the revenue districts of the State. The owners of this property have the right to demand, that whatever taxes are levied upon it, shall be done in pursuance of laws prescribing *uniformity* as between it and all other like property, at the same time subjected to taxation, in the district for which the revenue is collected. The Supreme Court has declared that this obligation to *uniformity* commences with the assessment of value, as the indispensable predicate upon which, through an *equal rate*, the *object* is reached — an *equal burden* of *taxation* according to value, by *apportioning* the sum to be raised between the owners of property subject to the tax, in the *proportion* that the value of that belonging to each bears to the whole. Or, in the energetic language of Judge THURMAN, "Equality is the great idea of the Constitution. *Inequality* was the the pre-existing evil. *Equality is the remedy.*" And to suppress the mischief and advance the remedy, the Constitution *imperatively* "requires the *same burden* to be laid upon the *same value*," whatever the property may

be, or however used or employed. This is *taxing* all values "by a uniform rule."

Exchange Bank case, pp. 43–54.

But if there had been no decision, and no authorative construction of this article of the Constitution, the questions arising could not be regarded as doubtful, and no other conclusion than that reached by the Court, would be admissable. That the people have intended to ordain and establish a great, living and constantly to be applied *principle*, governing the taxation of property, which they have undertaken to make effective through the execution of *uniform* rules prescribed by law, no one will question; and that they have authorized no one, either in the enactment of these laws or their execution, to nullify their work by departures from the principle, or the mode of preserving it—I think equally manifest. That principle, designed to protect the property owner, is exactly that stated by Judge THURMAN — a perfect equality of burden in proportion to value, as between each owner and all other property owners subject to the tax — and the mode of preserving and making it practically operative, is exactly that stated by Judge BARTLEY — "*uniformity* in the *mode* of the assessment, as well as in the *rate* of taxation."

Without a true valuation, there can be no tax; without a like valuation of all property subject to the tax, there can be no *apportionment* of the amount to be raised by the tax; and without an equal rate per cent. upon such valua-

tions, there can be no *equality of burden* as between the property owners. They are all indispensable elements of the one process— "*taxing*" property — and no one of them can be detached from the others, or disregarded, without destroying the vital principle ordained by the Constitution. This process is to be accomplished through laws prescribing "*uniform rules*," and as such laws are not self-executing, through appropriate public agencies, acting in obedience to such rules. Laws that do not prescribe such rules, or departures from them in the execution, are equally violations of the constitutional rights of the tax-payer, and entitle him to protection in the judicial tribunals, or the Constitution is indeed a "dead letter."

The very least that can be claimed, (but much more than is necessary to claim in this case) and leave the constitutional provision of any practical value whatever, is, that every person, owning property of the same kind, subject to the same tax, and located wholly within the same taxing district, is entitled to be treated in the same manner, as every other person with property in like situation and condition; and that no two or more *modes or methods* for arriving at the valuation, equalization, or levy upon it, are allowable. If *uniformity* does not mean that much, the word has lost its signification, or has become synonymous with *diversity;* and at the same time one class of tax-payers have lost the right to have their measure of justice to the public, determined by the intelligence, conscience

and judment which determines that of other classes, between whom and themselves, equality of burden in *proportion* to value is absolutely enjoined.

I have no occasion to enter upon the inquiry, as to when and under what circumstances laws may be *uniform*, although limited in their operation to particular persons or a special subject matter — there being absolutely nothing in the case to give application to that description of learning.

If there is anything clear it is, that all class legislation, in the imposition of taxes under our system, is absolutely abolished; while the property upon which this extra burden is imposed, differs in nothing from all the other personal property of the County required to be taxed. By the allowance of Congress, these shares may be "*included* in the *valuation* of the personal property of the owner or holder," and taxed where the bank is located, not higher than other moneyed capital; but unless a horse, may go one way for valuation and equalization, and an ox, belonging to the same owner, another, this property cannot be divorced from that with which it stands connected in nature and kind, and by express designation of the statute.

It certainly would present a very novel illustration of *uniformity* that the same tax-payer, after making return of all his *personal property*, should find that the final valuation of his stocks in foreign corporations and choses in

action was to be made by the County Commissioners, his horses by the justices, his cattle by the constables, and his stock in National Banks by a board at Columbus—each acting without the means of knowing what the others had done, or having any reference to the grade or standard of valuations adopted by them; but it would be matter of still greater novelty and surprise when he found that the valuation fixed by the county authority upon one item of this property had been overhauled, and the amount doubled by some other authority, empowered to act upon this item alone, while all the valuations of all the other property subject to the same tax were left unchanged.

But it is suggested that the view taken by the Supreme Court of this State as to the necessity of *uniformity* in making the valuations, is not concurred in by the Courts of some other States having constitutions similar to our own. I have hastily examined the cases referred to, but I do not find any of the Constitutions worded like ours; much less do I find anything in the decisions, in the slightest degree opposed to the construction adopted by our own Supreme Court.

But I do not pursue the examination of these cases, or trouble the Court with comments upon them, because I do not see what legitimate influence it could have upon the decision of this case.

The people of this State, it is well known, are distin-

guished for their modesty, and for everything they hold in common with the other States, for their disinterestedness as well; but yet, three millions of people cannot surrender the right to make their own Constitution, and when it is made, to have it construed by their own Court of last resort. When this has been done, and the questions arising are of purely internal concern, such constructions are received as conclusive by this Court, whatever even *it* may think of their correctness, or however much they may be criticised by the Courts of other States. All the questions here presented are of that character, except such considerations as are referable to the act of Congress allowing this property to be taxed, and fixing its *status* in the States for that purpose. But surely the powers of the State to tax are not enlarged by that act. On the contrary, positive restrictions are interposed to prevent any discriminations against this description of property.

EQUALIZATION ACT OF 1877.

I now proceed to an examination of this Act, in the light of the Constitutional principles I have endeavored to present. An act done under its pretended authority, constitutes the grievance of which we complain. I make no question about any part of the Act *except the 5th Section*, which organizes a board to act upon bank shares alone, with power to set aside the valuations of County boards, and under which an addition of $250,000 was

placed upon the shares of this bank. This addition I claim to be both unjust and illegal, in that it results in imposing upon the owners of this property a burden of taxation, largely in excess of that imposed upon any other property of equal value in the county and city where the bank is located, and in the utter overthrow of the great principles of uniformity and equality ordained by the Constitution. Before proceeding to assign my reasons for this conclusion, I ought, perhaps, to correct some erroneous statements into which counsel have inadvertantly fallen. This feature of the law is represented as having "been on the statute book for years." The fact is, it was *first* introduced in the Statute of 1876, which survived but a year, and was unconditionally repealed by the Act of 1877, now in force, and the only Act in existence allowing the valuations of personal property by County boards to be interfered with by a State board.

Again, it is said, (p. 3 Appellant's arg.) that the *only* material difference between the Acts of 1876 and 1877, is, "that the valuation by the County Auditor as provided in that Statute (1876) is reviewed by an annual County board of equalization before it is transmitted to the State board of equalization." A more complete misconception would be hard to imagine. The fact is, that while the Act of 1876 (Sec. 3) did give the State board power to find the "value in money" of the shares of the several banks returned, and to give effect to the finding by "adding to" or

"reducing" the valuations accordingly — that power is carefully eliminated from the Act of 1877, and such a restriction placed upon the powers of the board, as to make its exercise an impossibility. The two statutes have nothing in common in that respect, as will be still more apparent, as I progress.

I. I claim that the taxes levied upon this addition to the valuations of these shares is unjust and illegal, because it is just so much in excess of the burden imposed upon any other property of equal value. The *fact* is established beyond rational dispute. The only evidence taken in the case establishes, that the valuation put upon these shares by the County board, was higher in proportion than that affixed to other personal property, including the capital of private banks. But the thing which determines the matter conclusively, both for us and the public, is, that the tribunal constituted by law, with full authority to fix the valuation of our shares, and equalize such valuation with that put upon all other personal property of the County, *has decided it* — has fixed our valuation and made it correspond with that placed upon other property, subject to the same taxes, in proportion to the respective values of each.

The authority given to, and duty imposed upon the County board, (being the same as in respect to other personal property) is thus expressed in the 3d Section of the

Act of 1877: They "shall *equalize the valuation* of the shares of such bank or banking association, so fixed and determined by said County Auditor, and *with full authority to equalize said shares according to their true value in money.*" Their proceedings have not been assailed by either averment or proof. They have acted strictly within the jurisdiction conferred by law, and I need not certainly cite authorities to this Court to show, that their conclusions and determinations are entitled to full faith and credit. By them it is *established*, that we should rightfully be taxed upon a certain amount, which will make our burden of taxation *equal* to that imposed on other like property of the County; and yet, one-fourth is added, and this equality destroyed, and our burdens correspondingly increased, and still it is doubted whether we are entitled to any relief!

To our demand for it, this stereotyped answer is constantly interposed:—You are not taxed upon an amount exceeding the *real* value of your shares, which is the amount for which you should have been originally assessed, and if others are taxed upon a less *proportionate* valuation, it shows, not that you are taxed too much, but that they are not taxed enough.

To a proposition thus specious, but utterly unsound, I propose to devote a moment's attention. I am not aware that any issue is made, or proof taken, as to the *real* value

of our stock; and certainly the presumption arising from the action of the County Board is, that that and all other personal property was fixed at such value.

As a matter of fact, however, as is well known to residents of the State, the public officers and boards charged with the duty of assessing property for taxation, have been in the habit for more than a quarter of a century, of placing a much lower value upon it that owners generally would consider it worth, or perhaps could obtain for it. This habit has not only been generally acquiesced in, but received the direct sanction of the General Assembly, when in 1870 (the last equalization of the assessment of real property), it authorized the State Board to deduct from the ascertained values returned by the County boards over *one hundred millions* of dollars, as is fully shown in the argument of General Swayne.

This practice, as will be readily seen, in no way interfered with the relations of property owners to each other, nor with the equality of burden which each should bear, as that burden would be precisely the same, whether all property was valued at full price, or at fifty per cent. of that price; it would only change the *rate* of levy to raise a given amount of revenue. But if, as between two pieces of property of equal value, one is assessed at its full value, and the other at only fifty per cent. of it, and the same per cent. of levy is made, the owner of the one will be burdened with just twice the taxation that the other is. That

is exactly what, with a less difference, is attempted here; and what I fail to appreciate is, how these taxpayers, on account of the supposed irregularities of the public officers, with which they have had no concern, have lost the Constitutional right to be subjected to an *equal burden* only in proportion to value, with every other person owning property subject to the tax.

We are in no way related to them, so as to have inherited their sins of omission or of commission; and it certainly places the public in a very strange position when it is obliged to insist, that one body of its agents, charged with the duty of fixing a valuation upon all the personal property of a district, have fixed it below its *actual* value; and that, *therefore*, another body has been authorized to raise that belonging to a particular class up to its *actual value*, leaving all the rest below it, in order that the Constitutional injunction to tax all property at its true value in money, may be observed; although the inequality of burden thus produced is absolutely prohibited by the same Constitution. But this is not the first time that this argument has been produced, and it has been answered by men much abler to do so than I am, and I leave to them the space to assign the reasons. By the former Constitution of Illinois it was provided as follows:

"The General Assembly shall provide for levying a tax by valuation, so that every person and corporation shall

pay a tax in *proportion to the value of his or her property.*"—*Sec. II. Art. 9.*

This provision of the Constitution was considered by the Supreme Court, in the case of *Bureau County vs. Chicago, &c., R. R.* 44 Ill. R. 239, upon the following state of facts: The Board of Equalization for the county had raised the returned value of the company's property forty per cent.; and although this increase did not raise it above its real value, yet, it was proved, that it was returned at a valuation as high as the other property of the county.

The Court below instructed the jury, that "if the company valued their property in their schedule or return, so that it bore a just relation to other property in the county, then the board of supervisors had no power to increase the valuation, and they should find for the company: and further, if the jury believed that the addition of forty per cent. to the aggregate valuation returned by the company so increased the valuation that it bore an undue proportion of the taxes of the county, then such increase was unwarranted by law, and the jury would be authorized to reduce the assessment, so that it would bear a proper proportion to such taxes, but they could not reduce it below the valuation fixed upon it by the company. Appellants asked instructions directly opposite to those given for appellees, which were refused by the Court."

Chief Justice BREESE, one of the oldest and ablest of the

Western judges, delivering the opinion of the Supreme Court, said:

"The instructions so given, announce principles so congenial to justice, and so consonant with the principles of equity, and so reasonable, as to challenge the approbation of all right-minded men, and they ought to be sustained if they are in accordance with the law under which the proceedings were had. This, then, becomes the main point of inquiry."

* * * * * *

"It is insisted by appellees, that their property, by this addition of forty per cent. on its valuation, as returned by them to the County Clerk, placed on it by the board of supervisors, has the effect to cause them to pay a greater proportion of the revenue than is demanded of individuals listing their property for taxation in the same county. If this be so, no just mind, with the Constitution of the State before him, could sanction the proceeding. The great central and dominant idea in that instrument is, uniformity of taxation; and no power exists, or should exist, in any corporate authority, to go counter to this demand of the fundamental law."

* * * * * *

"The question is before us in all its length and breadth: Can a railroad company, by any action of the corporate authorities of a county, be required to pay more than its

fair share of taxes as compared with those paid by indivdiuals? Does the power exist anywhere to destroy the cardinal principal of uniformity of taxation, so forcibly and prominently insisted upon by the Constitution? This is a great question, affecting not only railroad corporations, but every property owner and tax-payer in the State."

"It seems to us there is something so monstrous in the proposition as to be indefensible by fair argument."

"Regarding uniformity as the vital principle, the dominant idea of the Constitution, where can the power reside to produce its opposite? Where is the power lodged, in view of this principle, to compel A to pay on his land or personal property, of no more value than the same kind of property belonging to B, forty per cent. more taxes than are assessed against B? We affirm, such a power nowhere exists, and if it did, it would be so revolting in its exercise to the lowest sense of justice with which our species are imbued, as to justify any and every lawful expedient for relief against it."

"The framers of the Constitution and our law-makers, to their credit be it said, have kept steadily in view the principles of equality and justice in adopting a system of taxation which commends itself to the favor and approbation of all well organized minds. It is no argument to urge that the fault is with the assessors in the case of individuals, and with railroad companies in making out their schedule

for the County Clerk. If the assessors violate their duty, are railroad companies to be the sufferers? If they neglect to act fully up to all the requirements of law, is that any reason why A should pay forty per cent. more taxes, in proportion to value, than B?"

"Would not the sense of justice of every man in this community be outraged by allowing this or any other depreciation to one class of people, and demanding of another a higher taxation on a similar article of the same actual value? The proposition cannot commend itself to the favor of any just man, and can receive no countenance in a court of justice."

"It is an admitted fact on both sides to this controversy that the property of no one owner in the county of Bureau has been taxed on its real value, and that the per cent. added by the board of supervisors to the valuation of the property of appellees, imposes on them a greater proportionate burden than the law requires them to bear. We are of this opinion, and therefore consider the action of the board unfounded in justice, and in direct opposition to the Constitution. The great attractive feature of uniformity has been disregarded by the board, and appellees victimized. It may be very desirable that the greatest share of our public burdens shall be borne by these corporations, but until there be a radical change in our fundamental law this cannot be done. They stand on the platform of equal-

ity before the law, and no greater burden for the support of government can be imposed on them than can be placed on the individual taxpayer."

The subject came, very recently, before the same Court in the case of *Law et al. vs. The People*, 87 Ill. R., 388. The substance of the decision is stated correctly and very clearly in the *syllabus* in these terms:

"It is made the duty of assessors, and of the State Board of Equalization, so far as charged with that duty, to assess all personal property at its '*fair cash value*,' and all real estate at a 'price it would bring at a fair voluntary sale,' *so that every person or corporation shall pay a tax in proportion to his or its property.*"

"The State Board of Equalization found, by resolution, that the local assessors had assessed property at only fifty per cent. of its actual value, and, after equalizing, assessed the property of railroads and other private corporations on the same basis, instead of at its fair cash value, as the statute required: *Held*, that their action was proper, as obeying the *Constitutional mandate, requiring uniformity*, rather than the literal terms of the statute, and that it could work no injustice."

Mr. Justice SCOTT, in delivering the opinion of the Court, says:

"Under our Constitution, all needful revenue shall be

levied by a tax on the valuation, so that every person or corporation shall pay a tax in proportion to his or its property. Whatever rules may be adopted to carry out this provision of the Constitution, should be with a view to produce that result. Accordingly, it is made the duty of assessors, and the State Board of Equalization, so far as it is charged with that duty, to assess all personal property at its 'fair cash value,' and all real estate at a 'price it would bring at a fair, voluntary sale.' However desirable it may be that all assessments should be made on that basis, it is known such a result has never yet been reached. When the State board came together their first duty was to ascertain, as nearly as practicable, on what basis the valuations of both real and personal property had been made. *That was indispensable to any just equalization of values.* They found all valuations of real and personal property had, in fact, been made on a basis of fifty per cent. of its cash value, and expressed their finding in a resolution adopted. Had the board resolved all property in the State had been assessed at its fair cash value by the local officers, for taxation, it would not have changed the actual fact with which the board had to deal. *Common honesty* required the board to declare the exact truth, as we have no doubt was done, from the best information attainable. It was a fact within their jurisdiction to find, and if fairly done, and from the most reliable information in their possession, we

are not aware such a finding can be reviewed by any Court or by any tribunal."

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"Whatever may be the statutory injunction as to making valuations of property for taxation, the *controlling authority* as contained in the Constitution is, it shall be so valued that each person and corporation shall pay a tax in proportion to his or its property. Under the circumstances, had the State board set down the property of corporations at its *fair cash value*, as ascertained for the purpose of taxation, then such property would have been subjected to an increased taxation in proportion to property of other owners, *which the Constitution positively inhibits*." And after adverting to the rule adopted by the board, he adds:

"It was the only rule that could have been adopted to secure anything like *uniformity* in valuations for taxation. A strict observance of the statute, in that respect, would have worked manifest injustice, *as well as a plain violation of that Constitutional requirement*."

* * * * * *

"That which the Constitution imposed was the higher duty, and the State board was not at liberty to disregard *its provisions*. This view of the law is sanctioned in *Bureau County* vs. C. B. & Q. R. R. Co., 44 Ill., 229." And in this court, in reference to the same Constitution, where it was very properly held that there was nothing to prevent the

shares of National Banks from being taxed at the place where the bank was located, or to enforce absolute *uniformity* in the method of making the valuations, only that they should be "ascertained by some person or persons to be elected or appointed," as provided by law—yet, the CHIEF JUSTICE acknowledges the obligation to secure *equality* in the imposition of the burdens of taxation, as fully as could be desired. He says:

"The object of these Sections is to secure uniformity of taxation. That, it is said in *Bureau Co.* v. *C. B. and Q. R. R. Co.*, is to be regarded as the *cardinal principle*, the *dominant idea* of this article of the Constitution. But *uniformity* in this connection is only another name for *equality*, for the provision is for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or its property.' The value of the property being ascertained, the same rate of taxation must be laid upon all.

"Property is made the constitutional basis of taxation. This is not unreasonable. Governments are organized for the protection of persons and property, and the expenses of the protection may very properly be *apportioned* among the persons protected according to the *value of their property protected*."

These opinions are so clear, cogent and convincing, as to preclude all necessity for commenting upon them. If this

Court, adopting the language of the State Court, was authorized to say, in reference to the Constitution of Illinois, that *uniformity* of taxation — "only another name for *equality*" — was the "*cardinal principle*, the *dominant idea*" of that Constitution, Judge THURMAN was still better authorized to say of ours: "All is *uniformity*, all *equality*." The only real difference between them, is — that while that of Illinois allows the valuations to be made by any just method provided by law, ours requires them to be made by a *uniform rule*, as the only sure means of reaching perfect *equality in the burdens* of *taxation*. Both condemn, in equally explicit terms, every law, act or contrivance, by which one man is made to pay more taxes upon the same value than another. And these cases have most thoroughly exploded the idea, that the mass of property can be left for taxation at a standard below its real value, and a part be raised to its real value, and thus burdened with more than its share of the common burden, without directly violating these Constitutional provisions.

But, it is said, absolute equality in taxation is unattainable. Granted. Ignorance, incompetency, negligence and dishonesty, to say nothing of a great diversity of judgment between men, will undoubtedly produce some inequality, and are sad impediments in the way of the perfect execution of any system of taxation. But I never heard, that for this reason, the General Assembly was absolved from

making an honest effort to attain it; or that they might cut themselves loose from all restraints, and *authorize* or *sanction* those measures, which inevitably result in *inequality*.

That is precisely what they have done, and precisely that of which we complain. Under their pretended authority, a quarter of a million of dollars has been added to the valuation of these shares, which had been compared with and equalized by the valuation of all other personal property; without changing, or having a pretence of authority to change, a dollar in the valuations of such other property, subject to the same taxes. And all this upon the flimsy pretext put forward and condemned in the *Bureau county* case, that the *addition* does not raise the assessment of these shares above their real value. It is perfectly immaterial whether it does or does not, since it is undeniably clear that it changes the *proportions* between this property and all other property, and thereby *enhances* the burdens upon this property, and in the same proportion *diminishes* them upon other property. The very idea of an *equalization* between tax-payers, inherent in the signification of the word itself, involves an examination and comparison of the value of the property by them respectively owned, and whatever standard of values may be adopted, an obligation to make them *equal in proportion* to the value of the property owned by each. This the County board did, and its determination upon this vital question of *proportions*, bound everybody, and as to everybody but

these shareholders, has settled their relative obligations, and upon this *basis* the taxes have been levied. We say, it settled it for us as well as them; that after being brought with others into that tribunal, neither that or any other authority could value our property upon any other basis than that common to all; and whether that basis was full value, (and there is nothing to show that it was not), or any modification of it, it became the *common basis* upon which the taxes must be levied, in order to insure any *uniformity* or *equality* as between the different owners of the property. I am, therefore, fully authorized to say, upon the authority of the cases I have cited, and many more referred to by General Swayne, and especially upon the sound and unanswerable reasons assigned in those cases, that this addition made to our valuations, and consequently to our burdens of taxation, was unauthorized and void, and involved a most palpable and dangerous breach of the Constitutional guaranty against *inequalities*, in levying the public burdens of taxation; as well as a total disregard of the spirit and purposes of the act of Congress allowing these shares to be taxed.

II. If the State Board of Equalization had been authorized to find the money value of these shares, and to give effect to their finding — still, the fifth section would have been unconstitutional and void, so long as it gave the board no power over the other personal property of the county, and no means of knowing whether a cash value of

the shares would leave them in harmony with the values placed upon other property. Authority to act upon these shares alone would leave them without power to *equalize* them with other property subject to the same taxes, and would utterly destroy the *uniformity* ordained by the Constitution; and result, (without the merest accident,) in a like destruction of the great ultimate principle—*equality of burden in proportion to value*. Without a word of explanation, some confusion may exist, as to the constitution and functions of boards of equalization, in our system of taxation. They are, and always have been, of two sorts—*County boards*, (and incidentally within counties, City boards), and *State boards*. *As between tax-payers*, and the separate pieces of property owned by them, *the valuations of the County boards are final and conclusive*. No State board has ever been invested with any authority to interfere with them. But, *as between the counties of the State*, the State board simply determines, which are rated too low, and which too high, *in proportion*, and they add a percentage to the one or deduct it from the other, as the case may require. Power is also given, under particular circumstances, to deal in the same manner with cities and towns in counties, but in no way changing the principle. What is the consequence? If a county is raised, all the valuations of property, as fixed by the County board, *are raised in the same proportion*; if lowered, the same proportion is observed — so that, the *proportionate* burdens of taxation are in no way changed. So far, these general

State boards have only been created for the equalization of real estate; but I do not doubt the power to create them for the personalty as well, if the General Assembly sees fit. As their action, however, could only affect the distribution of the State tax, (everywhere less than one-tenth the aggregate levy), it has not been thought advisable to do so, and the whole matter, without supervision or control, has been left to the County boards.

I see nothing in all this but *harmony*, *uniformity* and *equality*. Everybody is treated alike, and no man's just proportion of the public burdens is changed. But this glance at the system, enables us to see more clearly the character of the partial and unjust *excrescence* recently fastened upon it by the act under consideration. By that act, only a *class*, owning the same kind of property as others, and equally subjected to the same County board for its valuation, are dealt with. After that board has settled its value, and equalized it with all other personal property, and laid the foundation for an equal proportionate burden of taxation, this Statute allows a distant board, without any knowledge of the valuations put upon any other personal property, or any authority to change themif they did know, and without having any regard to any standard of valuation — to upset the valuations made, and destroy the proportions established, and add as much as they choose to the burdens of the owners of these shares. If this is *uniformity*, it is uniformity with a vengeance. If it is *equal-*

ity, either in treatment, course of procedure, or results, it is of the sort that the less we have of it, the better.

A law authorizing such a board to equalize the horses alone of a County — horse with horse — without any regard to the valuations placed upon the cattle or other personal property, would not differ in principle from this. Indeed, if this course can be maintained, there may be as many different ultimate valuations of personal property in the same County and subject to the same taxes, as the Legislature sees fit to provide for dividing it into. That such a course would be utterly inconsistent with the *uniform* valuations provided for in the Constitution, and would inevitably result in the complete overthrow of the equality of burdens, so sedulously guarded by that instrument, seems to me almost too plain for argument. But, it is said, I would take all discretion from the Legislative body, and permit the laws to be executed only by the same agents.

My position leads to no such results. I leave all the *discretion* to the General Assembly, that the people have seen fit to leave it. I only insist that those indispensable elements, which enter into the process of "*taxing*" in proportion to *values*, include valuations as the foundation upon which alone taxes can be levied, and without which there can be no "taxing." If this be so, by the express command of the Constitution, it must be accomplished by

a "*uniform rule*" — *uniform*, at least, in respect to that upon which the law operates; and it must be made to operate, both in obedience to this provision and Section 26 of Article two, upon everything not distinguished by situation or circumstances. No such distinction here existed; and no difficulty was found in subjecting us to the uniform rule, provided for all other personal property, until the valuations were made by the competent public authority, and our relations to all other property were established. Then came this exceptional proceeding by which the establishment of our valuations, was overthrown, and all others left to stand, although it was as easy and practicable to have provided for a review of theirs, as ours, and thus have given the proceeding the character of *uniformity* throughout.

The proceedings were *uniform* throughout, until our rights and those of others connected with us, were settled and determined, and there the proceeding should have ended. In attempting to go further with one class of property owners only, the Constitution was violated, not alone in an exceptional mode of assessment, but also by a palpable invasion of that great principle of *equality*, for the preservation of which assessments are made. I do not consider it of the slightest importance, in what way, nor in how many ways, the County board got control of the property upon which they were to act. They alone could make the final valuations, and until they did act, the rights and obligations of no one were fixed.

With a moderate degree of good faith, intelligence and reflection, it is not difficult to distinguish between that part of the subject of taxation which the people have regulated in the Constitution, and that which is left open to legislative discretion and control. The Constitution has certainly ordained that in the imposition of taxes upon property, there must be no discriminations; that all must bear a burden of taxation in proportion to its money value; and as no tax can be laid, or proportions ascertained, or equality secured, without valuations, these must be made by *uniform rules*. It is very true that the Constitution itself has fixed a standard of valuations—the money value; but as this must be applied by human judgment and intelligence, (of which there are few things more variable), the Constitution, (going further in this than the Constitutions of most of the States), the better to insure equality, has in effect provided that all property, in the same situation and subject to the same taxes, should be valued by one uniform mode of procedure. Everything outside of these principles and their accompanying safeguard, has been left to legislative discretion and regulation.

Looking, therefore, to equality of burdens as the polar star, "the dominant idea," of the Constitution, it is easy to test the validity of any statute drawn in question. If it encroaches upon this great principle, or any of the measures which the people have ordained for its preservation, it is necessarily inoperative and void; if it does not, its

validity cannot be impeached. In this instance, this *supplement* to a uniform course of procedure, is made to operate only upon one description of personal property, and upon one class of property owners; and as a practical result of the exercise of the powers supposed to be conferred by the Act of 1877, the uniform valuations of the County board have been disregarded, and a large addition put upon this property alone; the *proportion* of values as between this property and all other personal property, has been annihilated, and, as the inevitable consequence, the burdens of taxation upon this property have been made much larger than upon any other property of *equal* value, in utter disregard of the principle of equality ordained by the Constitution, and so vigorously upheld by the Supreme Court of the State. If such a precedent is to be maintained, I do not go too far when I say, that all the evils of class legislation, inequality and injustice, which existed before the Constitution was adopted, are thoroughly restored; and the people and their court of last resort have struggled in vain to inaugurate a purer and a better system. If the taxpayer may not shield himself from partiality and injustice, under Constitutional principles so plainly expressed, and so clearly interpreted, any appeal from legislative omnipotence is useless.

III. I have so far proceeded upon the supposition, that the Act of 1877 had given some power, or imposed some duty upon this board, to ascertain the true value of the

shares, and make the result the basis of taxation upon them. *But nothing could be further from the fact.* It has given no such power, and imposed no such duty. On the contrary, it has expressly restricted their powers in a way to make such an inquiry wholly useless, and such a result impossible. From the aggregate valuations of the *twenty-eight millions* of National Bank shares in the State, as fixed by the County Boards, they are not permitted to vary more than a *hundred thousand* dollars.

If they are returned a million of dollars above their *real value*, they cannot be reduced that amount; if a million below, they cannot be raised.

It is, therefore, preposterous to speak of this procedure as a sort of appeal from the County boards, to fix the true value in money of these shares.

The Legislature had no such purpose, as is manifest from almost every line of the fifth Section of the Act. If they had, why carefully eliminate every word in the Act of the preceding year, which could be construed to indicate such a purpose? Why deprive the board of all power to give effect to the result of such an inquiry, according to the truth, by denying their right, whatever the truth might be, to vary from the aggregates returned, more than the mere *bagatelle* of a hundred thousand dollars? But they may *equalize*. What? "The valuation of the shares of such banks or banking associations." Equalize with what? The

answer is equally plain—the valuations placed upon bank shares by the County boards, *with each other*. The Act has no wider scope. Now, these bank shares are located in almost every county of the State, and are taxable there *equally* with other personal property. They have been valued there by County boards, and *equalized* there, upon such scale of valuation as such boards respectively, have applied to all the personal property of the County; and the law presumes, from the faith and credit accorded to official action, assessed at the true value.

That a dead level of intelligence, judgment and discretion has been secured, nobody will suspect; but that each board has assessed all the property upon which it has acted, with a view to attaining a *proportionate* valuation of each item of it, and thus securing an equal burden of taxation upon each, may not only be presumed, but must be assumed as true upon the soundest legal principles. This was made their legal duty, and in the absence of any showing to the contrary, it must be presumed they performed it.

Making every presumption possible in favor of the action of the State board, it certainly cannot be assumed that they have done that which they were neither authorized nor required to do by the Act appointing them; much less that they have done that which it was impossible they should do, or that which was expressly denied to them.

First. They were neither authorized nor required to as-

certain the true value in money of these shares, and return the amount to the County, *as a basis for taxation upon them.*

Second. No power whatever was conferred upon them to *equalize* the valuation of these shares with the valuations put upon other personal property in the County, as fixed by the County board; and no power to raise or otherwise change those valuations. Indeed, it was morally impossible that they should have had any reference to the valuations of other property, as they could be furnished with no information upon the subject, and must have remained wholly ignorant as to their bearing and porportions to the valuations fixed upon the bank shares.

Third. They were expressly denied the right to give effect to the result of any inquiry as to the true value of the bank shares, beyond a certain small amount from the *aggregate* valuations; which would completely nullify and render absurd any honest attempt to arrive at the true valuation of the bank shares, to say nothing of the total inability to make them conform to the valuations of other property, subject to the same taxes.

What, then, was this board created for, and authorized to do?

Plainly, exactly that stated in the Act itself as their sole duty — to "equalize" the valuations placed upon bank shares, in the several counties of the State, upon

some principle wholly undefined, so that the shares of each bank should be placed upon an equal footing with those of all other banks. This is the most liberal view that can be taken of this statute, and if bank shares were *alone to be taxed*, would have the semblance of fairness in it. But when applied to our actual system of taxation, it antagonizes every limitation of the Constitution to which I have referred. It certainly may be presumed, and as certainly must be assumed, that the shares were valued by the County boards respectively, at what each supposed their true value, and that they placed the valuations upon this property upon the same scale and proportion as all other property. And yet, the duties of this State board were in no way superseded. Let all the shares have been valued at their true value, or above it, yet, if for any reason, the State board thought those of one bank valued *proportionately* higher than another, they were bound to *equalize* them, although in so doing they left both much above their real value. If the shareholders of a bank in one county had, in their opinion, been worse treated than those of another, they were bound to put a part of the misfortune upon the shareholders who had fared best. What was the inevitable effect of sending back to the respective counties the increased and diminished amounts thus produced, as a basis upon which to levy the taxes of the County?

Plainly this, that neither would furnish the slightest evi-

dence of being the true value of the shares, and each would have been thrown out of proportion with all other property, and each, consequently, subjected to either a greater or less burden of taxation than other property of the county. The additional taxes upon this property are, therefore, levied upon sums that in no probability represent the true value of the shares, and with *positive certainty* much larger sums than those affixed to other property of equal value. Such a course involves not only illegality, but positive injustice. The taxes of counties and cities rest as a burden upon property within the borders of each, in proportion to the money value of such property, and embrace, as we have seen, nearly the whole amount of the annual levy for all purposes. Any arrangement which looks beyond the counties respectively for a basis of proportions between property within them, must necessarily furnish a false basis; and when confined to one description of property alone, destroys all *equalization* of that property with other property, subject to pay its proportion of the same burdens.

Now, it is undeniably clear, that no property can be constitutionally taxed upon a sum larger than its money value; and just as clear that this act has, not only carefully excluded the State board from making that the *test* of its equalization, but has deprived it of all power to give effect to any finding of such values, if they should happen to be more or less than the aggregate returned by the County

boards by $100,000, in twenty-eight millions of shares. To call this freedom or power to find and return to the counties the true value of these shares, is simply absurd. In thus leaving this proceeding open to false valuations—indeed, forcing false valuations in the event that the true would not meet the limitation of the act; and in destroying the proportions fixed by the County board between this property and other property subject to the same taxes, a fatal blow is given to that great ultimate principle of the Constitution—equality of burdens in taxation; whatever the property may be or by whomsoever owned.

This hasty and very imperfect review of the provisions of the fifth section of this act, has brought me to the conclusion, that it is clearly inconsistent with the Constitution of the State in the several particulars which I have indicated.

First, in departing from the *uniformity* of procedure in making valuations required by that instrument, in making the addition to the valuation of these shares, without disturbing or changing that fixed by the County board, upon other personal property in the same situation and circumstances.

Second, in allowing the valuations fixed by the County board, in a proceeding general and uniform, to be changed as to this property alone, by a board placed under no obligations to adhere to its true value, or to regard any proportion of values between it and other property of the

county; but only to equalize it with the valution of other like shares in other Counties of the State.

Third, by these unconstitutional and irregular proceedings, so increasing the valuation of these shares, as to place upon them a burden of taxation greatly in excess of that imposed upon any other property of equal value in the County or City where the bank is located.

In considering the validity of this statute, and the proceeding under it of which we complain, I have invoked no technical considerations; and counting for nothing mistakes, errors and omissions, I have only insisted upon those substantial considerations which concern the inviolability of the Constitution of the State where our property is located, and individual justice to the parties owning these shares, who cannot but feel that they have been partially and unjustly treated, in singling them out for the imposition of heavier burdens than are imposed on other property owners. They have placed themselves in the most equitable position possible, for claiming their rights. They have cheerfully paid the share of taxes allotted to them by the public authority, common to them and all other taxpayers, and all they now ask is to be relieved from an unauthorized addition to it, which they believe to be illegal, and know to be unjust.

Two other provisions of the Constitution, alluded to in the Bill, have been considered at much length by opposing

counsel. They are Sections 26 and 27 of Art. II — the first relating to the uniform operation of laws of a general nature, and the last taking from the Legislature the power of appointing to offices. As I have considered the necessity of uniformity under the kindred, but more direct provision in the taxation article, and as both these sections are somewhat incidental to the main subject of inquiry here, I am content to leave them upon the expositions they have received in the two leading cases of *State vs. Kennon*, 7 O. St. 546, and *Kelley vs. State*, 6 O. St., 269.

There is some weight in the suggestion, that, upon the principles I maintain, the valuation of these shares should have been submitted to the City instead of the County board of equalization; but as we take no exception of that kind, it does not seem competent for the public authorities to do so; and besides, if it were available and sustained, it could result in nothing but establishing that *no* valid assessment had been made, and consequently no legal tax levied.

But it is again said, that the constitutional objections made to this enactment are equally applicable to several other statutes, and would invalidate them also, if sustained.

I have run over the references, and find nothing very objectionable in any of them, and certainly nothing bordering upon the serious objections arising upon this new

Act of 1877. The one most commented upon — the rail-road assessment law — contains nothing opposed to any principle for which I have contended. Such property is and must be assessed as an entirety, and located in different counties, its valuation could not be committed to any one County board; and is provided for by a very suitable assessing board, composed of the Auditors of the several counties into or through which the road extends — officers to whom the assessments of all other property are returned, and fully advised of the grade of valuation fixed upon all. This subject has been so much considered and so often decided in other states, as to make much comment unnecessary. It requires no great discrimination to distinguish the difference between property of that character and situation, and personal property wholly within a County, and not only capable of being submitted, as all other personal property, to a County board for valuation and equalization, but which, under a general and uniform law, has been so submitted and its valuation fixed. But I would not be too confident, that in the mass of legislation to which reference is made, other encroachments upon the Constitution might not be found. It would take a bold man, knowing anything of legislative tendencies, to affirm that there could not be. But of what value could such a discovery be, in sustaining the Act in question, or defeating the claims of these property owners to the protection of the Constitution? The Legislature did not and could not make the Constitution;

and unless we act upon the logic that two nullities make a something, or two crimes an innocent man, it could not well be held that repeated violations of the instrument, would give the right to change or disregard its provisions, or could deprive the citizen of the protection it was designed to afford.

JURISDICTION IN EQUITY.

It may be both improper and unnecessary that I should say anything upon this subject, as no objection to the jurisdiction of a Court of Equity to grant suitable relief, if a case is made on the merits, has been interposed, either in the Court below or in this Court. But as the question has been raised in the Toledo case, I may, perhaps, be permitted to add a few suggestions to the thorough argument of Gen. SWAYNE upon this point. While it may be true, that the precise question in a case like the present, has not been decided by this Court, I think the Court has settled principles which essentially cover the ground, and do not leave the jurisdiction doubtful, whether the rights of the corporate body to the exercise of the franchises granted it, or its trust relations to its shareholders are regarded. The taxes, it is true, are levied against the shareholders, but if they are not paid, the law places the corporate body under the most embarrassing disabilities in the exercise of its ordinary corporate functions, by prohibiting the payment of dividends or making any transfers of stock, — functions vital to the maintainance of its credit, and

the orderly transactions of its business; or if, to avoid these embarrassments, it pays the taxes, and they turn out to be illegal, it subjects itself to a multitude of suits by its shareholders. Even if actions at law could be maintained by the bank or its shareholders for the unlawful interference, the remedy would be totally inadequate, as has been repeatedly held by this Court, commencing with the leading case of *Osborn vs. United States Bank*, 9 Wheat. 838, and the long line of decisions which have followed and affirmed it — notably that of *Dodge vs. Woolsey*, 18 How. 331. Without entering at length into an examination of this line of decisions, it may be briefly said, that they rest upon the inadequacy of judgments at law to furnish a complete remedy, and so far as I know, the jurisdiction has never been denied where the effect of the execution of an unconstitutional tax law, is to impair or destroy a franchise, or embarrass or injure its exercise, and is subject to repetition as often as taxes fall due. In the language of C. J. Marshall, in the principal case:—"To treat this as a common casual trespass would be to disregard entirely its true character and substantial merits."

* * * "The single act of levying the tax in the first instance, is the cause of an action at law; but that affords a remedy only for the single act, and is not equal to the remedy in Chancery, *which prevents its repetition and protects the privilege.*"

The jurisdiction, therefore, stands firmly upon the old

and acknowledged powers of a Court of Equity, to prevent by injunction an unlawful invasion of corporate franchises, liable to frequent repetitions, and where damages at law would be wholly inadequate; and especially where, acting in obedience to a contested statute, would subject the body to a multiplicity of suits, which in good faith it seeks to avoid by calling for a decision of the right, before liabilities have accrued.

But it would not be difficult to place the right to interference upon much broader, if not more satisfactory grounds. Even if an action at law would be the only remedy for the enforcement of an illegal tax against a single individual, yet, if the parties standing in the same situation in reference to it, are numerous, and their rights depend upon the same questions, Courts of Equity will entertain a suit brought by all, or one on behalf of all, to avoid the multiplicity of suits which would otherwise be necessary. This has been so held in two well considered cases in Ohio, as a settled doctrine of Equity adopted by the Code of that State.

Matheny vs. Golden, 5 O. St. 361.

Glenn vs. Waddel, 23 O. St. 609.

Now, considering the well recognized relations of the corporate entity to its shareholders, and the duties which flow from that relation, what can be more appropriate, when the interests of the entire association are menaced, than to seek appropriate remedies in the common name,

which the natural persons, who compose it, have assumed as the representative of their common interests and for their united protection.

As was most appropriately said by Mr. Justice MILLER, in a recent case: —

"But after all, this artificial body is but the representative of its stockholders, and exists mainly for their benefit, and is governed and controlled by them through the officers they elect."

17 Wal. 623.

This view of the subject stands in perfect harmony, with the numerous decisions of this Court, placing the entire jurisdiction of the Courts of the United States over corporations, upon the assumption that the natural persons composing them, and entitled by their citizenship to invoke the jurisdiction of those Courts, sue and are sued in the corporate name of the institutions to which they belong.

But the reasoning upon the subject, in all its bearings, has been so thoroughly presented by the New York Court of Appeals, in the case of *New York & New Haven R. R. Co. vs. Schuyler et al.*, 17 N. Y. 592, that I need do little more than refer the Court to that case. In a very able opinion the conclusion is reached, that,

"The interests of the corporate body and of the individuals who compose it are so nearly identical, that a separation in theory or practice would seem to be impossible."

R. P. RANNEY,

Of Counsel for Appellee.

No. 97 and 1047 of
last term — No. 19
and 693 of this term
are to be delivered
& cite the cases
under arguments